

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

PHHHOTO Inc.

Plaintiff,

v.

Meta Platforms, Inc. f/k/a Facebook, Inc.
and DOES Nos. 1-7,

Defendants.

Case No. 1:21-cv-06159-KAM-RLM

AMENDED COMPLAINT

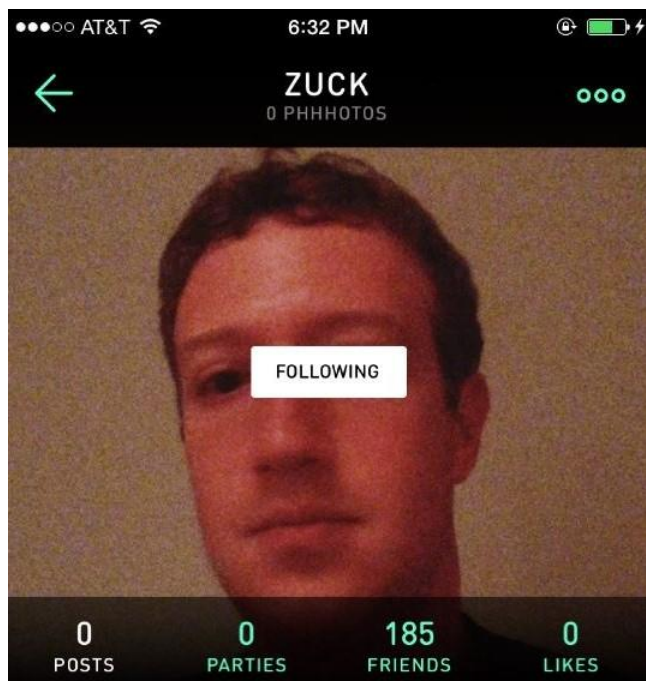
1. In 2012, a group of entrepreneurs and engineers—Champ Bennett (“Bennett”), Omar Elsayed, and Russell Armand (collectively, the “founders”)—set out to build an app that would create opportunities to capture moments in a format as expressive as video but as easy as a point-and-shoot camera. The result was Phhphoto, launched in 2014, which went beyond photography and aimed to create a social network that would give people opportunities to share their lives in ways they had never seen before. No format such as Phhphoto had ever existed. The Phhphoto app captured five frames in a single point-and-shoot burst and linked them together into a looping video, animating a still picture and making the subject come alive. The burst created a short video called a “phhphoto.” Users could post their phhphotos on Phhphoto’s internal social network or share phhphotos on Instagram.

2. As described by TechCrunch (a leading online publication for startup and technology news), “with quick app-switching to Instagram and integration with other social

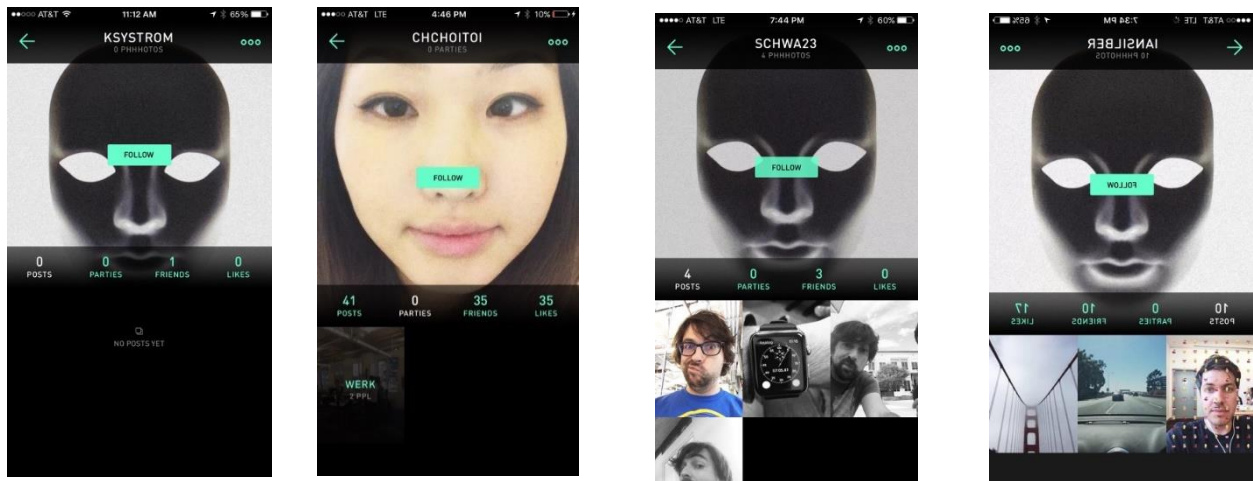
media, the [Phhphoto] app seems like one of the many natural successors to our ingrained Instagram behavior.”

3. Phhphoto’s technology formed the kernel for a *new* social network. Phhphoto could be described as an “instant animated camera.” It was billed as “quicker than video, better than stills,” and it offered users the ability to add filters to their phhphotos. The resulting short video allowed users to take and exhibit photography in a completely new way. Phhphoto was free to download, simple and easy to use, and available for both iOS and, by late 2015, Android devices. And Phhphoto provided a platform for social networking by enabling users to share their phhphotos to their social media accounts.

4. One early adopter of Phhphoto was Mark Zuckerberg (“Zuckerberg”), the CEO of defendant Meta Platforms, Inc, then known as Facebook, Inc. (“Meta”). On or about August 8, 2014, Zuckerberg downloaded and installed the app onto his phone, entered the phone number of his device into the Phhphoto app, created a personal account, and posted a profile picture of himself (reproduced below) to his new Phhphoto account.



5. Zuckerberg was not the only Meta executive to take notice of Phhphoto, create an account (as reflected in the profiles below), and do reconnaissance. On or about December 20, 2014, Kevin Systrom, formerly the co-founder and CEO of Instagram, and at that time the head of Meta’s Instagram business, followed Zuckerberg’s lead, downloading the Phhphoto app from the Apple App Store and creating an account. Thereafter, Meta employees Bryan Hurren (“Hurren”), John Barnett, and Christine Choi, among others, followed suit, all creating Phhphoto accounts, with several posting their pictures, and exploring Phhphoto’s features.



6. The new Phhphoto application soared in popularity. Phhphoto had fewer than 500,000 Monthly Average Users (“MAUs”) in early 2015, but that number grew to approximately 3.7 million MAUs at its peak.

7. Users increasingly posted photographic content made with the Phhphoto app onto Meta’s Instagram and Facebook platforms so that their followers could see that content in their “feeds.” Early on, the well-known songwriter and record producer staged-named Diplo contacted the fledgling company, unsolicited, to make an investment. Indeed, famous celebrities including Beyonce, Katy Perry, Miley Cyrus, Joe Jonas, Crissy Teigen, Bella Hadid, and Shawn Mendes

began to use Phhphoto without being solicited or compensated. They created their own content using the app and posted that content to their accounts associated with Meta’s Instagram product. The press took notice of Phhphoto’s early success and adoption.

8. So compelling was Phhphoto’s technology and content, and so popular was its application, that Hurren, then Strategic Partnerships Manager for Meta’s Facebook business, reached out to Phhphoto, asserting that Phhphoto was “really awesome.” Hurren first offered to incorporate Phhphoto’s technology into the Messenger service on Meta’s Facebook platform. When Phhphoto declined, Hurren offered to incorporate Phhphoto’s content into the Newsfeed for Meta’s Facebook platform users. Phhphoto invested heavily in this project, but ultimately Hurren did not move forward, citing internal “legal conversations” that “hung” the project up.

9. Instead, Meta had embarked on a scheme to crush Phhphoto and drive it out of business. Among other anticompetitive acts directed against Phhphoto, Meta first withdrew aspects of interoperability with its Instagram platform that it had previously provided to Phhphoto. Then, as described above, Hurren surreptitiously terminated the project that he had initiated for integrating Phhphoto’s content into the Newsfeed of Meta’s Facebook platform. The scheme continued with Meta changing longstanding third party content attribution rules of its Instagram business to Phhphoto’s detriment and introducing—with the anticompetitive intent and effect of harming Phhphoto rather than otherwise benefiting Meta—a market clone that copied feature-by-feature the Phhphoto product. The injurious intent and effect of these actions was not known to, and indeed affirmatively concealed from, Phhphoto at the time.

10. The anticompetitive campaign culminated in Meta’s change to the way that the Instagram platform displayed content in its own users’ feeds, which had the intent and effect of suppressing Phhphoto content. In October 2017, by pure chance, Phhphoto was able to discover

that Meta was not, contrary to its express representations, displaying content on its Instagram platform of most interest to a user. And only thereafter did further information emerge to reveal that Meta—through a closely guarded secret algorithm impenetrable to the outside world—had in fact been purposely suppressing Instagram users’ posts that contained Phhphoto content. Meta affirmatively concealed the nature of Instagram’s algorithm and published misleading statements about the change in the manner users would view posts on its Instagram platform.

11. Although Phhphoto undertook diligent efforts to understand its declining metrics prior to October 2017, there was no reason to investigate (and based on Meta’s purposeful misrepresentations, specific reason to reject) whether Meta’s algorithm was designed to penalize posts with Phhphoto content. Indeed, Phhphoto did not become aware of Meta’s overall campaign against competitors, nor of Mark Zuckerberg’s personal involvement in and direction of that campaign, until the release of internal Meta documents by the UK Parliament in December of 2018.

12. Meta employed this anticompetitive campaign against competitors, including Phhphoto, in order to maintain its monopoly in the market for personal social networking services. Meta secured that monopoly position by acquiring Instagram in 2012, thus controlling the two most significant platforms—Facebook and Instagram—in that relevant market. And Meta unlawfully used that power and engaged in exclusionary conduct to eliminate Phhphoto and others as competitive threats to Meta’s monopoly.

13. Meta’s actions destroyed Phhphoto as a viable business and ruined the company’s prospects for investment. Lacking investment or any other means to remain viable, the company shut down its operations in June 2017, while Meta continued to affirmatively conceal its anticompetitive conduct. Phhphoto failed as a direct result of that conduct. But for Meta’s

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