

AO 120 (Rev. 2/99)

TO: <b>Mail Stop 8</b> <b>Director of the U.S. Patent &amp; Trademark Office</b> P.O. Box 1450 Alexandria, VA 22313-1450	<b>REPORT ON THE                  FILING OR DETERMINATION OF AN                  ACTION REGARDING A PATENT OR                  TRADEMARK</b>
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In Compliance with 35 § 290 and/or 15 U.S.C. § 1116 you are hereby advised that a court action has been filed in the U.S. District Court Northern District of California on the following  Patents or  Trademarks:

DOCKET NO. CV 08-05064 WDB	DATE FILED 11/05/2008	U.S. DISTRICT COURT Northern District of California, 1301 Clay Street, RM 400S, Oakland, CA 94612
PLAINTIFF CRAIGSLIST INC		DEFENDANT KEVIN MESIAB
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK
1 2,395,1628		See Attached Complaint
2 2,905,107		
3 2,985,065		
4 3,008,562		
5		

In the above—entitled case, the following patent(s) have been included:

DATE INCLUDED	INCLUDED BY	
	<input type="checkbox"/> Amendment <input type="checkbox"/> Answer <input type="checkbox"/> Cross Bill <input type="checkbox"/> Other Pleading	
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK
1		See Attached Complaint
2		
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In the above—entitled case, the following decision has been rendered or judgement issued:

DECISION/JUDGEMENT
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CLERK Richard W. Wiekling	(BY) DEPUTY CLERK	DATE
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16 UNITED STATES DISTRICT COURT  
17 NORTHERN DISTRICT OF CALIFORNIA

18 SAN FRANCISCO DIVISION

19 **CV 08**

20 **WDB**  
21 **5064**

22 craigslist, Inc., a Delaware corporation,

23 Plaintiff,

24 v.

25 Kevin Mesiah d/b/a ezadsuite.com;  
26 EasyAd, LLC, an Idaho limited liability  
27 company; and Does 1 through 25,  
28 inclusive,

Defendants.

Case No.

**PLAINTIFF CRAIGSLIST, INC.'S  
COMPLAINT FOR:  
(1) COPYRIGHT INFRINGEMENT,  
17 U.S.C. § 101, et seq.; (2) VIOLATION OF  
THE DIGITAL MILLENNIUM  
COPYRIGHT ACT, 17 U.S.C. § 1201;  
(3) VIOLATION OF THE COMPUTER  
FRAUD AND ABUSE ACT, 18 U.S.C.  
§1030; (4) VIOLATION OF CALIFORNIA  
PENAL CODE § 502; (5) TRADEMARK  
INFRINGEMENT, 15 U.S.C. §§ 1114 and  
1125(A); (6) TRADEMARK  
INFRINGEMENT UNDER CALIFORNIA  
LAW; (7) BREACH OF CONTRACT;  
(8) INDUCING BREACH OF CONTRACT;  
(9) INTENTIONAL INTERFERENCE  
WITH CONTRACTUAL RELATIONS;  
AND (10) FRAUD;**

and

**DEMAND FOR JURY TRIAL.**

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i. INTRODUCTION

1. Defendants are engaged in the unauthorized copying and intentional abuse of craigslist for Defendants' own illicit profit at the expense of craigslist and legitimate craigslist users. Their ongoing activities burden craigslist's operating systems and impede the free local online marketplace communities that craigslist provides and seeks to protect. craigslist brings this action to stop Defendants' unauthorized and unlawful conduct, and to recover for the harm and expenses to craigslist already incurred.

2. craigslist and its twenty-five employees operate the website, [www.craigslist.org](http://www.craigslist.org). The website provides online localized classified ad placements and related online services.

3. craigslist serves millions of users in cities and communities around the world.

4. Other than small fees for job postings in ten cities and brokered apartment rentals in New York City, craigslist provides its services to the public free of charge.

5. craigslist is committed to providing users with a forum that is easy to use. To this end, it has developed online communities based on simplicity, speed, and uncluttered user interface displays.

6. craigslist presents users with simple lists of classified ads by category for geographic areas. The ads are posted by other craigslist users.

7. To post an ad, a user selects his or her geographic area, selects the appropriate category, and posts his or her ad.

8. craigslist automatically places new ads at the top of the list of ads for the chosen category within the selected geographic area. As new ads are posted, existing ads move progressively down the list.

9. craigslist implemented this system to create a simple, fair and efficient organization of posted ads, and this system is a foundational pillar of craigslist's operation and service.

10. craigslist protects this system through its Terms of Use ("TOUs") and security measures.





1 [www.ezadsuite.com](http://www.ezadsuite.com). On information and belief, Kevin Mesiab's residence and/or principal place  
2 of business is located at 3827 N. Lezana, Meridian, Idaho 83642.

3 22. craigslist is informed and believes, and based thereon alleges, that Defendant  
4 EasyAd, LLC is an Idaho limited liability company with its principle place of business located at  
5 3827 N. Lezana, Meridian, Idaho 83642.

6 23. Does 1-25 are persons or entities responsible in whole or in part for the  
7 wrongdoing alleged herein ("Doe Defendants"). craigslist is informed and believes, and based  
8 thereon, alleges that each of the Doe Defendants participated in, ratified, endorsed, or was  
9 otherwise involved in the acts complained of, and that they have liability for such acts. craigslist  
10 will amend this Complaint if and when the identities of such persons or entities and/or the scope  
11 of their actions become known.

12 24. Defendants Kevin Mesiab, Easy Ad LLC, and the Doe Defendants are referred to  
13 collectively in this Complaint as "Defendants."

14 **V. FACTS GIVING RISE TO ALL CLAIMS FOR RELIEF**

15 **A. CRAIGSLIST BACKGROUND**

16 25. craigslist started in San Francisco, California, in 1995. It was originally an email  
17 list by Craig Newmark about events in and around the San Francisco Bay Area for his friends and  
18 acquaintances. However, it quickly gained in popularity and scope as a forum for free local  
19 online classified ads and incorporated in 1999.

20 26. craigslist remains headquartered in San Francisco to date. It has twenty-five  
21 employees, all in San Francisco, and the servers on which the craigslist websites operate are  
22 located primarily in San Francisco.

23 27. Today, the craigslist website – [www.craigslist.org](http://www.craigslist.org) – is world renown. It provides  
24 free localized online classified ad services in over 500 cities in more than 50 countries, and is one  
25 of the most visited websites in the world. In the United States, craigslist's website is visited more  
26 than 10 billion times by more than 30 million users each month.

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1 **B. CRAIGSLIST'S WEBSITE AND CLASSIFIED AD SERVICES**

2 28. craigslist allows users to review or post online local classified advertisements for  
3 various categories of products and services on the craigslist website.

4 29. The website is organized first by geographic area, and then by category of product  
5 or service within a geographic area. This organizational system ensures that craigslist remains a  
6 *localized* service so buyers know they will find products and services available in their  
7 communities. It also ensures that craigslist remains an *efficient* service so buyers' searches for  
8 particular types of products and services are not littered with irrelevant postings.

9 30. The categories within each geographic area (for example, jobs, personals, housing,  
10 furniture, cars, clothes, and vehicles) are displayed on discrete webpages as lists of posted ads.

11 31. An ad appears in a category list identified by a descriptive title created by the user  
12 who posted the ad.

13 32. When a new ad is posted, it is automatically placed at the top of the selected  
14 category list in the chosen geographic area. Existing ads move progressively lower in the list as  
15 new ads are posted at the top.

16 33. This prioritization was implemented by craigslist as a simple method to achieve  
17 fair and efficient service to both buyers and sellers using craigslist. Every seller's ad receives  
18 initial positioning at the top of its list, and buyers seeking a product or service within a category  
19 see the most current ads first.

20 **C. CRAIGSLIST'S TOUs**

21 34. craigslist's services and the craigslist website are governed by TOUs. The TOUs  
22 are posted on the craigslist website, and users must affirmatively accept the TOUs to post ads on  
23 craigslist and to create an account on craigslist.

24 35. The TOUs grant users a limited, revocable, nonexclusive license to access the  
25 craigslist website and use craigslist's services. The license limits the authorized uses of the  
26 website and services, and identifies types of uses that are not authorized.

1           36.    The TOUs also set out penalties for particular violations of their terms and the  
2 craigslist's license.

3           37.    At all times relevant, the TOUs have, without limitation, prohibited the following  
4 activities:

- 5           •    Repeatedly posting the same or similar content;
- 6           •    Posting the same item or service in more than one category;
- 7           •    Posting the same item or service in more than one geographic area;
- 8           •    Posting ads on behalf of others, causing ads to be posted on behalf of others, and  
9           accessing craigslist services to facilitate posting ads on behalf of others;
- 10          •    Using a Posting Agent (a third-party agent, service, or intermediary that offers to  
11           post content to craigslist on behalf of others) to post ads;
- 12          •    Attempting to gain unauthorized access to craigslist's computer systems or  
13           engaging in any activity that disrupts, diminishes the quality of, interferes with the  
14           performance of, or impairs the functionality of, craigslist's services or the craigslist  
15           website;
- 16          •    Using any automated device or computer program that enables postings without  
17           each posting being entered manually (an "automated posting device"), including,  
18           without limitation, the use of any automated posting device to submit postings in  
19           bulk;
- 20          •    Making available content that uses automated means (e.g., spiders, robots,  
21           crawlers, data mining tools, and the like) to download data from craigslist; and
- 22          •    Sending unsolicited email advertisements to craigslist email addresses or through  
23           craigslist computer systems.

24           38.    The TOUs are attached to this Complaint as Exhibit A and incorporated into the  
25 Complaint as if fully set forth herein.

#### 26 **D.    POSTING ADS ON CRAIGSLIST**

27           39.    At the outset, a visitor to the craigslist website must select the geographic area in  
28 which they wish to find or post an ad.

          40.    Upon clicking the selected geographic area option, the user is presented with a  
webpage specific to that geographic area. From that webpage, a user seeking to post an ad must  
click a link titled "post to classifieds."

1           41. The user then chooses the type of posting they want to place from a list presented  
2 by craigslist for that geographic area (for example, job offered, housing offered, housing wanted,  
3 for sale, item wanted, personal/romance, or community). A yellow highlighted notice at the top  
4 of this webpage reminds users, as stated in the TOUs, that "cross-posting to multiple cities or  
5 categories is not allowed."

6           42. After selecting the type of posting, the user is presented with a list of categories for  
7 posting ads in that geographic area (for example, categories under "for sale" ads include, without  
8 limitation, auto parts, bicycles, boats, collectibles, electronics, jewelry, musical instruments, and  
9 tools), and must select the appropriate category for his or her ad.

10           43. After selecting the appropriate category, the user specifies from a list the nearest  
11 location within the geographic area, but a notice at the top of this webpage also alerts the users  
12 that "*there is no need to cross-post to more than one area - doing so may get you flagged and/or*  
13 *blocked - thanks!*"

14           44. On the subsequent page, the user creates the title, price, description and other  
15 details for the ad, and provides an email address for replies to the ad. (craigslist anonymizes the  
16 email address when the ad is posted and relays replies to the user's genuine email address.)

17           45. After verifying the content of the ad, the user is required to affirmatively accept  
18 craigslist's TOUs before the ad is posted.

19           46. If the user chooses to decline the TOUs, the ad is not posted.

20           47. If the user accepts the TOUs, the user receives a screen display that requires the  
21 user to respond to a CAPTCHA challenge (explained below). If the CAPTCHA challenge is  
22 successfully completed, an email is sent to the user's email address with links that allow the user  
23 to finally post, edit or delete the ad.

24           48. To help users manage ads for different products and services, craigslist enables  
25 users to create an account with craigslist.

26           49. To create a craigslist account, a user must provide a valid email address and  
27 affirmatively accept craigslist's TOUs.  
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1           50.     Users with a craigslist account can post ads through an abbreviated process using  
2 their account.

3           **E.     CRAIGSLIST SECURITY MEASURES**

4           51.     craigslist employs a number of security measures to protect the craigslist website,  
5 the integrity and operation of craigslist's systems and services, and craigslist users.

6           52.     One measure is the creation of temporary, anonymous email addresses for replies  
7 to ads posted by users.

8           53.     craigslist assigns a unique craigslist email address, in the form of sale-  
9 xxxxxxxx@craigslist.org, to each advertisement posted by a user. Emails sent to this craigslist  
10 email address are automatically forwarded by craigslist to the user's personal email address  
11 (provided when the user posts the ad or creates a craigslist account).

12           54.     This system avoids publication of users' personal email addresses, but still allows  
13 users to receive replies in their personal email accounts. It protects users' privacy and makes it  
14 more difficult for spammers to obtain users' email addresses.

15           55.     Another security measure employed by craigslist is the use of a verification  
16 program commonly known as CAPTCHA ("Completely Automated Public Turing test to tell  
17 Computers and Humans Apart"). CAPTCHA is designed to ensure that a human, not a machine,  
18 completes a certain task.

19           56.     craigslist uses a CAPTCHA to ensure that ads are posted manually (as required by  
20 the TOUs) and not by automated means.

21           57.     When a user creates an account or posts an ad, the user is presented with a  
22 webpage displaying a challenge-response test that appears in the form of a box containing  
23 partially obscured characters that the user must type into a designated box - this is the  
24 CAPTCHA. As shown in the example below, in craigslist's CAPTCHA, the characters of words  
25 are obscured so a person can read them, but computer programs, bots and other automated  
26 devices usually cannot.

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2 **make**

**contract**

**2 4 1 2**

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5 58. If the CAPTCHA is not timely solved, the post or creation of an account on  
6 craigslist cannot be completed.

7 59. A further security measure employed by craigslist is telephone verification.

8 60. This measure is designed to prevent repetitious, unauthorized, unlawful and  
9 abusive postings on craigslist by requiring a valid telephone number in order to post ads in certain  
10 categories.

11 61. When telephone verification is mandated, craigslist requires the user to enter a  
12 valid telephone number in a specified box on the craigslist website. craigslist then sends a  
13 temporary passcode to that telephone number, and the user must enter the temporary password on  
14 the craigslist website. Once a telephone number has been verified, it may be used to post ads to  
15 craigslist. craigslist periodically requires re-verification of these accounts.

16 62. If the telephone number is not verified, the post cannot be completed.

17 63. craigslist also uses various technological tools to detect and remove ads that have  
18 been abusively cross posted in multiple categories or multiple areas, or that are repetitively posted  
19 to stay at or near the top of a chosen list or lists.

20 **F. CRAIGSLIST'S COPYRIGHTS**

21 64. As noted at the outset, craigslist is committed to providing users with an easy-to-  
22 understand, easy-to-navigate forum to post and locate ads in local communities. To that end, the  
23 craigslist website provides uncluttered interfaces and displays for user input, searches and results.

24 65. craigslist's website is, by design, uniquely distinctive in its clarity, composition  
25 and simplicity. Among the significant unique elements of the craigslist's website are the clear and  
26 simple craigslist account registration and log in features, and the clear and simple post to  
27 classified features.  
28

1           66. The website is a badge of craigslist's promise to provide local online marketplace  
2 communities that are predominantly free, friendly and easy to use. The simplicity and clarity of  
3 the craigslist website are fundamental to craigslist's reputation and garner substantial and valuable  
4 goodwill with users.

5           67. As an online venture, the intellectual property related to the craigslist website is a  
6 vital asset to craigslist.

7           68. craigslist's website is a work of authorship protected by copyright law.

8           69. craigslist owns all right, title and interest, including copyrights, in and to its  
9 website, including, but not limited to, the post to classifieds, account registration and account log  
10 in expressions and compilations.

11          70. The craigslist website displays copyright notices.

12          71. craigslist has registered copyrights in its website, including, but not limited to, the  
13 post to classifieds, account registration and account log-in features of the website. These  
14 registrations include:

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Reg. No.	Reg. Date	Title
TX0006866660	September 19, 2008	Accounts.craigslist.org 2004.
TX0006866658	September 19, 2008	Accounts.craigshst.org 2008.
TX0006866657	September 19, 2008	Craigslist website 2006.
TX0006866662	September 19, 2008	Post.craigslist.org 2004.
TX0006866661	September 19, 2008	Post.craigslist.org 2008.

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23 **G. CRAIGSLIST'S TRADEMARKS**

24          72. craigslist also carefully protects its trademarks.

25          73. craigslist owns common law rights in the CRAIGSLIST mark.

26          74. craigslist is also the owner of U.S. federal registrations nos. 2395628, 2905107,  
27 2985065, and 3008562 for the CRAIGSLIST mark, covering, *inter alia*, "[a]dvertising and  
28 information distribution services," "online interactive bulletin boards for transmission of

1 messages among computer users concerning classified listings," and "on-line computer data bases  
2 and on-line searchable databases featuring information, classified listings and announcements."  
3 craigslist has also registered the CRAIGSLIST mark in many other countries throughout the  
4 world.

5 75. CRAIGSLIST has been used in commerce by craigslist since 1995. craigslist's use  
6 has been substantially continuous and exclusive.

7 76. craigslist has attained strong name recognition in the CRAIGSLIST mark. The  
8 mark has come to be associated with craigslist and identifies craigslist as the source of  
9 advertising, information, bulletin board and database services offered in connection with the  
10 mark.

11 77. craigslist has also developed substantial goodwill in the CRAIGSLIST mark.

12 78. As noted previously, the craigslist website is one of the most visited websites in  
13 the world, and, in the United States alone, the craigslist website is visited by more than 30 million  
14 users each month.

15 79. craigslist considers the CRAIGSLIST mark among its most important and valuable  
16 assets.

#### 17 **H. ILLICIT POSTING SOFTWARE AND SERVICES**

18 80. Illicit auto-posting software and services threaten craigslist's simple, fair and  
19 efficient classified ad posting and listing system. Auto-posting software and services enable  
20 craigslist users to repetitiously post duplicative ads within a category on craigslist to keep the ad  
21 at or near the top of the category list. They also enable postings in multiple categories on  
22 craigslist and in multiple geographic areas.

23 81. Auto-posting software and services load craigslist's classified ad services with  
24 hundreds or thousands, or more, ads that are redundant, miscategorized and/or mislocated.

25 82. Repetitious posting of an ad, posting an ad in multiple categories, and posting an  
26 ad in more than one geographic area are all prohibited by the craigslist TOUs. The TOUs also  
27  
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1 expressly prohibit the use of any automated posting devices, including, but not limited to  
2 computer programs, that enable posting ads without manually entering each one.

3 83. Auto-posting disrupts craigslist's services by clogging craigslist categories with  
4 numerous advertisements for the same products or services or ads for irrelevant products or  
5 services. Auto-posting activities degrade craigslist user experiences and cause harm to  
6 craigslist's reputation as a fast, efficient, and fair platform for sellers to advertise and buyers to  
7 locate local items and services.

8 84. For example, auto-posting impairs the efficiency and ease-of-use of craigslist  
9 services for legitimate users by causing category lists to display duplicative ads that users are  
10 forced to sift through to find legitimate ads. Ads that are repeatedly auto posted also inequitably  
11 displace new ads legitimately placed at the top of a category list. Additionally, auto-posting ads  
12 in multiple categories or multiple geographic areas subverts users' expectations that they will find  
13 only ads regarding particular products or services within a certain category and that they will find  
14 only ads for *local* products or services within a given geographic area.

15 85. Auto-posting imposes heavy burdens on craigslist's computer systems and  
16 personnel. It creates heightened demands on craigslist's computers and systems, and causes  
17 craigslist to expend time and resources and to incur additional costs in order to provide its users  
18 with reliable, efficient service. But for craigslist's efforts and expenditures to thwart auto-posting  
19 and its impacts, auto-posting would cause craigslist's computers and systems to operate  
20 inefficiently, take longer to respond to legitimate users' requests, and become overwhelmed and  
21 potentially fail.

22 86. To continue to profit from their sale of unauthorized, unlawful auto-posting  
23 software and services despite craigslist's effort to bar them, Defendants intentionally circumvent  
24 technological security measures implemented by craigslist to stop auto-posting. They have  
25 circumvented tracking systems, CAPTCHAs, and telephone verification, among others. Indeed,  
26 whenever craigslist implements a new preventive measure, Defendants appear deterred only as  
27 long as it takes them to devise furtive means to circumvent the new measure.

1     **I.     DEFENDANTS' AUTO-POSTING SOFTWARE AND SERVICES**

2             87.     Defendants, operating www.ezadsuite.com, sell "automated posting devices" as  
3 defined in craigslist's TOUs. They sell computer software, entitled "EasyAd Suite," and other  
4 automated devices and related services that enable the submission of postings on craigslist  
5 without each posting being entered manually, including, but not limited to, the automated  
6 submission of postings in bulk that circumvent craigslist security measures, including, but not  
7 limited, to CAPTCHAs and telephone verification.

8             88.     Defendants advertise that, with products they have developed and sell, users can  
9 "post a hundred times more ads than you can by hand, with just a few easy clicks of your mouse."  
10 They also assert that they enable customers to "Post *Unlimited Ads* to Craigslist," and that their  
11 program is "*100% Automated* - Set it up & walk away..." (Emphasis in original.)

12             89.     Defendants boast that there are "*1.5 Million Ads Posted by EasyAd Suite Per*  
13 *Week*." (Emphasis in original.)

14             90.     Defendants charge customers \$397.00 for a copy of their EasyAd Suite Deluxe 2.0  
15 software.

16             91.     In addition, Defendants sell pre-verified "Craigslist User Accounts."

17             92.     Defendants tout that the craigslist accounts they sell are all phone verified, created  
18 with a unique phone number and IP address, and guaranteed to work. Indeed, Defendants  
19 encourage: "Stay up to date with Craigslist's demanding verification procedures. **We use Unique**  
20 **IPs & Phone Numbers.**" (Emphasis in original.)

21             93.     Defendants sell their pre-verified Craigslist User Accounts for prices varying from  
22 \$20 each for five verified accounts to \$6 each for 1,000 verified accounts.

23             94.     Defendants also sell an extra product to ensure circumvention of craigslist's  
24 CAPTCHAs when the EasyAd Suite software is unable to decode the CAPTCHA challenge.

25             95.     As Defendants explain: "When EasyAd Suite encounters a captcha it does not  
26 know how to decode on its own, it sends it to a third-party service where it is solved by a *real*  
27 *person for less than a penny.*" (Emphasis in original.)

1           96. Defendants provide this ability to instantaneously outsource CAPTCHA  
2 circumvention in bulk for prices from \$12.50 for 500 "Craigslist Captcha Credits" to \$157.50 for  
3 10,000 credits, or 1.1 cents per CAPTCHA for 50,000 down to 1/2 cent per CAPTCHA for 5  
4 million credits.

5           97. On information and belief, Defendants accessed and copied the craigslist website  
6 (including, but not limited to, creation of cached copies of the website) to develop, test,  
7 implement, use and provide their EasyAd Suite software, and other auto-posting software,  
8 programs, devices and services.

9           98. These acts of access and copying were unauthorized or in excess of authorized  
10 access to the craigslist website, services, computers and systems.

11           99. On information and belief, Defendants continue to access and copy the craigslist  
12 website (including, but not limited to, creation of cached copies of the website) to operate,  
13 maintain and update their auto-posting software, programs, devices and services.

14           100. These acts of access and copying were and are unauthorized or in excess of  
15 authorization to the craigslist website, services, computers and systems.

16           101. On information and belief, Defendants were required to affirmatively agree to and  
17 accept, and did affirmatively agree to and accept, craigslist's TOUs at one or more times when  
18 they accessed the craigslist website and ad posting services.

19           102. On information and belief, each time Defendants affirmatively accepted and  
20 agreed to abide by craigslist's TOUs, Defendants intended to violate the TOUs and concealed  
21 their intent to violate the TOUs from craigslist.

22           103. Defendants' actions are knowing, intentional, willful, malicious and fraudulent.

23           104. On information and belief, Defendants do not disclose to their customers that their  
24 services are unlawful and violate the craigslist TOUs.

25           105. Defendants knowingly, willfully, intentionally, fraudulently and maliciously  
26 induce, encourage and assist craigslist users to abuse craigslist systems and services and violate  
27 the craigslist TOUs.

1                   **J.                   DEFENDANTS' USE OF THE "CRAIGSLIST" MARK**

2                   106. Defendants without authorization have used the famous "CRAIGSLIST" mark in  
3 commerce to advertise their unlawful software and services on the Internet in a manner likely to  
4 confuse consumers as to their association, affiliation, endorsement or sponsorship with or by  
5 craigslist.

6                   107. Defendants' unauthorized use of the "CRAIGSLIST" mark includes, but is not  
7 limited to, display of the mark in the text and boldly in the headings of sponsored links on  
8 Internet search engines.

9                   108. For example, Defendants have used the CRAIGSLIST mark in the following  
10 sponsored link advertisement on the Google search engine.

11                   **EasyAd Suite | Essential Craigslist Marketing Tools**  
12 **EasyAd Poster is the Top Craigslist Auto Posting Software. Join more**  
13 **than 5000 marketers using our Automated Posting Software. Post**  
14 **Unlimited Ads Today!**  
**www.ezadsuite.com/ - 18k - Cached - Similar pages**

15                   109. Defendants' use of the CRAIGSLIST mark causes confusion and mistake and is  
16 likely to deceive customers and potential customers regarding the origin, affiliation, association,  
17 connection and/or endorsement of Defendants' auto-posting products and services, Defendants'  
18 website, and/or Defendants with or by craigslist.

19                   110. At no time has craigslist authorized or consented to Defendants' use of the  
20 CRAIGSLIST mark or any other craigslist intellectual property.

21                   111. At no time has craigslist had any association, affiliation or connection with, or  
22 endorsed Defendants' products or services, Defendants' website, or Defendants. Specifically,  
23 Defendants' software and services are *not* authorized, approved, endorsed, or sponsored by, or  
24 associated, affiliated, or connected with craigslist, and Defendants and their website are *not*  
25 authorized, approved, endorsed, or sponsored by, or associated, affiliated, or connected with  
26 craigslist.

1           112. In using the CRAIGSLIST mark, Defendants have willfully and deliberately  
2 sought to profit from craigslist's pre-established goodwill and reputation.

3 **K. CRAIGSLIST'S INJURIES**

4           113. Defendants' actions and activities burden, interfere with and harm craigslist's  
5 systems, services, and resources; burden, interfere with and harm the use of craigslist by  
6 legitimate users; burden, interfere with and harm craigslist's relationship, reputation and goodwill  
7 with legitimate users; and violate numerous provisions of the TOUs.

8           114. Defendants have caused craigslist to incur substantial costs to investigate,  
9 remediate, prevent and combat Defendants' auto-posting software, programs, devices and  
10 services and Defendants' unauthorized access to and use of craigslist's systems and services, and  
11 to investigate, remediate and prevent harm to craigslist's computer systems and services caused  
12 by the Defendants.

13           115. For example, the increased load and burden on craigslist's servers, and the burden  
14 on craigslist's personnel resources to develop counter measures, investigate incidents, remove  
15 unauthorized ads, and address user complaints as a result of auto-posting, cost craigslist well in  
16 excess of \$5,000 per year.

17           116. Damages and losses incurred by craigslist include, without limitation, interference  
18 with craigslist's load balancing; interference with proper and efficient service to legitimate users;  
19 requiring craigslist to undertake extraordinary actions to monitor and enhance website  
20 infrastructure; and significantly increasing costs of data storage, troubleshooting, customer  
21 service, and system maintenance.

22           117. Furthermore, the harm to craigslist's relationships, reputation and goodwill with  
23 legitimate users is real and irreparable.

24           118. For example, users have blamed craigslist for interference with the fair and  
25 efficient operation of craigslist services caused by illicit auto-posting, and have accused craigslist  
26 of conspiring with parties responsible for auto-posting, like Defendants. Users who become  
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1 frustrated by auto-posting abuses on craigslist may stop using craigslist and never return. Such  
2 injuries to craigslist cannot be compensated by monetary damages and are irreparable.

3 119. In a further effort to deter precisely the kind of activity in which Defendants are  
4 engaged, the craigslist TOUs include a liquidated damages provision to compensate craigslist for  
5 harm and injury from certain unauthorized and prohibited activities.

6 120. Under the 'TOUs' liquidated damages provision, as a result of their violations,  
7 Defendants are liable to craigslist for, among other relief and remedies, the following amounts:

- 8
- 9 • \$1,000 for each post or message that impersonated any person or entity, or falsely  
10 stated the affiliation of the sender with another person or entity;
  - 11 • \$100 for each message posted in excess of limits established by craigslist or each  
12 day that craigslist is accessed after craigslist terminates access to or use of the  
13 service; and
  - 14 • \$100 for each item posted by a posting agent.

15 121. craigslist is entitled to an injunction to stop Defendants' unlawful activities and the  
16 irreparable harm they are causing craigslist. craigslist is also entitled to monetary damages,  
17 including, but not limited to, liquidated damages, to compensate for the quantifiable harm and  
18 injury Defendants have caused and continue to cause craigslist.

## 19 VI. CLAIMS FOR RELIEF

### 20 FIRST CLAIM FOR RELIEF COPYRIGHT INFRINGEMENT (DIRECT, VICARIOUS AND CONTRIBUTORY) 17 U.S.C. § 101, ET SEQ.

21 122. craigslist realleges and incorporates by reference all of the preceding paragraphs.

22 123. craigslist owns and has registered copyrights in its website and specific portions  
23 thereof.

24 124. Defendants had and have access to craigslist's website.

25 125. Defendants have copied and/or created derivative works from craigslist's website  
26 and/or portions thereof, and continue to do so.

27 126. Defendants' copies and/or derivative works are substantially similar to craigslist's  
28 original copyright-protected website.





1           145. craigslist's computers are involved in interstate and foreign commerce and  
2 communication, and are protected computers under 18 U.S.C. § 1030(e)(2).

3           146. On information and belief, Defendants intentionally accessed craigslist's computers  
4 without authorization or in excess of authorized access, and through interstate or foreign  
5 communication, obtained information from craigslist's computers in violation of the Computer  
6 Fraud and Abuse Act ("CFAA"), 18 U.S.C. § 1030(a)(2)(C).

7           147. On information and belief, Defendants knowingly and with intent to defraud,  
8 accessed craigslist's computers without authorization or in excess of authorized access, and  
9 thereby furthered the intended fraud and obtained services of value (other than use of the  
10 computers) in violation of the CFAA, 18 U.S.C. § 1030(a)(4).

11           148. On information and belief, Defendants intentionally accessed craigslist's computers  
12 without authorization and caused and/or recklessly caused damage in violation of the CFAA, 18  
13 U.S.C. § 1030(a)(5)(A)(ii) and (iii).

14           149. Defendants' actions have caused loss to one or more persons, including, but not  
15 limited to, craigslist, in a one year period aggregating at least \$5,000 in value in accordance with  
16 the CFAA, 18 U.S.C. § 1030(a)(5)(B)(i).

17           150. Defendants' conduct has also caused irreparable and incalculable harm and injuries  
18 to craigslist, and, unless enjoined, will cause further irreparable and incalculable injury, for which  
19 craigslist has no adequate remedy at law.

20           151. Under the CFAA, 18 U.S.C. § 1030(g), craigslist is entitled to injunctive relief,  
21 compensatory damages, and other equitable relief.

22                           **FOURTH CLAIM FOR RELIEF**  
23                           **VIOLATION OF CAL. PEN. CODE § 502**

24           152. craigslist realleges and incorporates by reference all of the preceding paragraphs.

25           153. craigslist is the owner or lessee of the computers, computer systems, computer  
26 network, computer programs, and data that operate the craigslist website and services.

1           154. Defendants have knowingly accessed and without permission used craigslist data,  
2 computers, computer systems and/or computer network in order to devise and/or execute a scheme  
3 to defraud and deceive in violation of California Penal Code § 502(c)(1).

4           155. Defendants have knowingly accessed and without permission taken, copied, and/or  
5 made use of data from craigslist computers, computer systems and/or computer network in  
6 violation of California Penal Code § 502(c)(2).

7           156. Defendants have knowingly and without permission used or caused to be used  
8 craigslist's computer services in violation of California Penal Code § 502(c)(3).

9           157. Defendants have knowingly and without permission accessed and added data to  
10 craigslist computers, computer systems and/or computer network in violation of California Penal  
11 Code § 502(c)(4).

12           158. Defendants have knowingly and without permission disrupted or caused the  
13 disruption of craigslist's computer services and/or have knowingly and without permission denied  
14 or caused the denial of computer services to authorized users of craigslist's computers, computer  
15 services and/or computer network in violation of California Penal Code §502(c)(5).

16           159. Defendants have knowingly and without permission provided or assisted in  
17 providing a means of accessing craigslist computers, computer systems, and/or computer network  
18 in violation of California Penal Code § 502(c)(6).

19           160. Defendants have knowingly and without permission accessed or caused to be  
20 accessed craigslist computers, computer systems, and/or computer network in violation of  
21 California Penal Code § 502(c)(7).

22           161. craigslist has suffered and continues to suffer damage as a result of Defendants'  
23 violations of the California Penal Code § 502 identified above.

24           162. Defendants' conduct also has caused irreparable and incalculable harm and injuries  
25 to craigslist (including, but not limited to, craigslist's reputation and goodwill), and, unless  
26 enjoined, will cause further irreparable and incalculable injury, for which craigslist has no  
27 adequate remedy at law.



1 in connection with which such use is likely to cause confusion or mistake, or to deceive, in  
2 violation of 15 U.S.C. § 1114.

3 171. Upon information and belief, Defendants have engaged in such false designation  
4 of origin, association, affiliation, connection, endorsement and/or approval knowingly, willfully,  
5 deliberately, and in conscious disregard of craigslist's rights, making this an exceptional case  
6 within the meaning of 15 U.S.C. § 1117.

7 172. craigslist has been damaged and will continue to be damaged, and Defendants  
8 have been unjustly enriched, by such unlawful conduct in an amount to be proven at trial.

9 173. In addition, Defendants' conduct described herein has caused and, if not enjoined  
10 will continue to cause, irreparable damage to craigslist's rights in its marks, and to the business,  
11 positive reputation and goodwill of craigslist, which cannot be adequately compensated solely by  
12 monetary damages. craigslist therefore has no adequate remedy at law and seeks permanent  
13 injunctive relief pursuant to 15 U.S.C. § 1116.

14 **SIXTH CLAIM FOR RELIEF**  
15 **TRADEMARK INFRINGEMENT UNDER CALIFORNIA LAW**

16 174. craigslist realleges and incorporates by reference all of the preceding paragraphs.

17 175. craigslist owns common law rights in the CRAIGSLIST mark that date back to  
18 1995.

19 176. The acts and conduct of Defendants as alleged in the CLAIM FOR RELIEF  
20 immediately above constitute trademark infringement under the common law of California.

21 177. As a direct and proximate result of Defendants' conduct, craigslist has been  
22 damaged in an exact amount to be proven at trial.

23 **SEVENTH CLAIM FOR RELIEF**  
24 **BREACH OF CONTRACT**

25 178. craigslist realleges and incorporates by reference all of the preceding paragraphs.

26 179. Use of the craigslist website and use of craigslist services are governed by and  
27 subject to the TOUs.  
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1           180. At all relevant times, the main craigslist homepage and the homepage for each  
2 geographic region have provided links to the TOUs.

3           181. In addition, users are presented with the TOUs and must affirmatively accept the  
4 TOUs to register for a craigslist account to post ads.

5           182. In addition, users are presented with the TOUs and must affirmatively accept the  
6 TOUs before they can post an ad without an account.

7           183. On information and belief, Defendants affirmatively accepted and agreed to the  
8 TOUs.

9           184. On information and belief, Defendants have repeatedly accessed and used  
10 craigslist's website and services, and thereby accepted the TOUs.

11           185. On information and belief, Defendants affirmatively accepted the TOUs by  
12 clicking the "ACCEPT the terms of use" option (not the "DECLINE the terms of use" option)  
13 when they set up accounts on craigslist.

14           186. On information and belief, Defendants affirmatively accepted the TOUs by  
15 clicking the "ACCEPT the terms of use" option (not the "DECLINE the terms of use" option)  
16 when they posted ads on craigslist.

17           187. The TOUs are binding on Defendants.

18           188. Defendants' actions, as described above, have willfully, repeatedly and  
19 systematically breached the TOUs.

20           189. craigslist has performed all conditions, covenants, and promises required of it in  
21 accordance with the TOUs.

22           190. Defendants' conduct has damaged craigslist, and caused and continues to cause  
23 irreparable and incalculable harm and injury to craigslist.

24           191. craigslist is entitled to injunctive relief, compensatory damages, liquidated  
25 damages under the TOUs, attorneys' fees, costs and/or other equitable relief.  
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**EIGHTH CLAIM FOR RELIEF  
INDUCING BREACH OF CONTRACT**

192. craigslist realleges and incorporates by reference all of the preceding paragraphs.

193. craigslist's TOUs constitute a valid and existing contract between craigslist and craigslist users.

194. Defendants had knowledge of the TOUs and of the valid and existing contract between craigslist and craigslist users created by the TOUs.

195. Defendants intended to induce users to breach their contract with craigslist.

196. Users who were induced to utilize Defendants' products and services did in fact breach the TOUs by acts, including, but not limited to:

- Repeatedly posting the same or similar content;
- Posting the same item or service in more than one category;
- Posting the same item or service in more than one geographic area;
- Gaining unauthorized access to craigslist's computer systems; and
- Using "automated posting devices" to post to craigslist.

197. These breaches of the TOUs were caused by Defendants' unjustified and wrongful conduct.

198. Defendants' conduct has damaged craigslist, and caused and continues to cause irreparable and incalculable harm and injury to craigslist.

199. craigslist is entitled to injunctive relief, compensatory damages, liquidated damages under the TOUs, attorneys' fees, costs and/or other equitable relief.

200. craigslist is informed and believes that Defendants' conduct was undertaken with the intent to injure craigslist, or with a willful and conscious disregard of craigslist's rights, and constitutes clear and convincing evidence of oppression, fraud and malice under California Civil Code § 3294. As a result, craigslist is entitled to an award of punitive damages against Defendants in an amount sufficient to deter them from future misconduct.



1 things, use automated devices, post duplicative ads, post ads in multiple categories or multiple  
2 geographic areas, or otherwise abuse or interfere with the website or services.

3         211. On information and belief, Defendants affirmatively accepted the TOUs by  
4 clicking the "ACCEPT the terms of use" option (not the "DECLINE the terms of use" option)  
5 when they set up accounts on craigslist, and thereby expressly represented to craigslist that they  
6 would comply with the TOUs, and thus that they would not, among other things, use automated  
7 devices, post duplicative ads, post ads in multiple categories or multiple geographic areas, or  
8 otherwise abuse or interfere with the website or services.

9         212. On information and belief, Defendants affirmatively accepted the TOUs by  
10 clicking the "ACCEPT the terms of use" option (not the "DECLINE the terms of use" option)  
11 when they posted ads on craigslist, and thereby expressly represented to craigslist that they would  
12 comply with the TOUs, and thus that they would not, among other things, use automated devices,  
13 post duplicative ads, post ads in multiple categories or multiple geographic areas, or otherwise  
14 abuse or interfere with the website or services.

15         213. craigslist reasonably relied on Defendants' representations to provide Defendants  
16 with access to portions of the craigslist website and access to certain services offered on the  
17 craigslist website.

18         214. Defendants' representations that they would comply with the TOUs were false.

19         215. Defendants have accessed and used the craigslist website and services, and, when  
20 they accepted the TOUs, they intended to, and did, access and use the craigslist website and  
21 services, in violation of the TOUs as described above.

22         216. On information and belief, when Defendants accepted the TOUs and accessed and  
23 used craigslist's website and services, they concealed from craigslist their true intent to violate the  
24 TOUs.

25         217. As a result of Defendants' fraudulent representations and omissions, Defendants  
26 obtained information about the structure and operating features of craigslist's website and services  
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1 to enable them to design, test and operate their auto-posting software and services and related  
2 devices.

3 218. Defendants' conduct has damaged craigslist, and caused and continues to cause  
4 irreparable and incalculable harm and injury to craigslist.

5 219. craigslist is entitled to injunctive relief, compensatory damages, liquidated  
6 damages under the TOUs, attorneys' fees, costs and/or other equitable relief.

7 220. craigslist is informed and believes that Defendants' conduct was undertaken with  
8 the intent to injure craigslist, or with a willful and conscious disregard for craigslist's rights, and  
9 constitutes clear and convincing evidence of oppression, fraud and malice under California Civil  
10 Code § 3294. As a result, craigslist is entitled to an award of punitive damages against  
11 Defendants in an amount sufficient to deter them from future misconduct.

## 12 **VII. PRAYER FOR RELIEF**

13 WHEREFORE, plaintiff craigslist, Inc. prays for the following relief:

14 1. A preliminary injunction and permanent injunction enjoining and restraining all  
15 Defendants, their employees, representatives, agents, and all persons or entities acting in concert  
16 with them during the pendency of this action and thereafter perpetually from:

17 (a) Manufacturing, developing, creating, adapting, modifying, exchanging,  
18 offering, distributing, selling, providing, importing, trafficking in, or using any automated device  
19 or computer program (including, but not limited to, any technology, product, service, device,  
20 component, or part thereof) that enables postings on craigslist without each posting being entered  
21 manually;

22 (b) Manufacturing, developing, creating, adapting, modifying, exchanging,  
23 offering, distributing, selling, providing, importing, making available, trafficking in, or using  
24 content that uses automated means (including, but not limited to, spiders, robots, crawlers, data  
25 mining tools, and data scraping tools) to download or otherwise obtain data from craigslist;

1 (c) Engaging in any activity that disrupts, diminishes the quality of, interferes  
2 with the performance of, or impairs the functionality of, craigslist's services or the craigslist  
3 website;

4 (d) Copying, distributing, displaying, creating derivative works or otherwise  
5 using protected elements of craigslist's copyrighted website (located at www.craigslist.org),  
6 including, but not limited to, the website's post to classifieds, account registration and account log  
7 in expressions and compilations, and from inducing, encouraging, causing or materially  
8 contributing to any other person or entity doing the same;

9 (e) Circumventing technological measures that control access to craigslist's  
10 copyrighted website and/or portions thereof (including, but not limited to, CAPTCHAs and RE-  
11 CAPTCHAs), and from inducing, encouraging, causing or materially contributing to any other  
12 person or entity doing the same;

13 (f) Manufacturing, developing, creating, adapting, modifying, exchanging,  
14 offering, selling, distributing, providing, creating, importing, trafficking in, or using technology,  
15 products, services, devices, components, or parts thereof, that are primarily designed or produced  
16 for the purpose of circumventing technological measures and/or protection afforded by  
17 technological measures that control access to craigslist's copyrighted website and/or portions  
18 thereof, and from inducing, encouraging, causing or materially contributing to any other person or  
19 entity doing the same;

20 (g) Accessing or attempting to access craigslist's computers, computer  
21 systems, computer network, computer programs, and data, without authorization or in excess of  
22 authorized access, including, but not limited to, creating accounts or posting content on the  
23 craigslist website, and from inducing, encouraging, causing, materially contributing to, aiding or  
24 abetting any other person or entity to do the same;

25 (h) Manufacturing, developing, creating, adapting, modifying, exchanging,  
26 offering, selling, distributing, providing, importing, trafficking in, purchasing, acquiring,  
27 transferring, marketing or using any program, device, or service designed to provide an  
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1 automated means of accessing craigslist's website, automated means of creating craigslist  
2 accounts, or automated means of posting ads or other content on the craigslist's website,  
3 including, but not limited to, any program, device, or service that is, in whole or in part, designed  
4 to circumvent security measures on the craigslist website;

5 (i) Repeatedly posting the same or similar content on craigslist, posting the  
6 same item or service in more than one category on craigslist, posting the same item or service in  
7 more than one geographic area on craigslist, and from inducing, encouraging, causing, assisting,  
8 aiding, abetting or contributing to any other person or entity doing the same;

9 (j) Posting ads on behalf of others, causing ads to be posted on behalf of  
10 others, and accessing craigslist to facilitate posting ads on behalf of others;

11 (k) Using, offering, selling or otherwise providing a third-party agent, service,  
12 or intermediary to post content to craigslist;

13 (l) Misusing or abusing craigslist, the craigslist website and craigslist services  
14 in any way, including, but not limited to, violating the craigslist TOUs;

15 (m) Accessing or using craigslist's website for any commercial purpose  
16 whatsoever; and

17 (n) Using the CRAIGSLIST mark and any confusingly similar designations in  
18 Internet advertisements and otherwise in commerce in any manner likely to confuse consumers as  
19 to their association, affiliation, endorsement or sponsorship with or by craigslist.

20 2. An order requiring Defendants to account for, hold in constructive trust, pay over  
21 to craigslist, and otherwise disgorge all profits derived by Defendants from their unlawful  
22 conduct and unjust enrichment as permitted by law;

23 3. An award to craigslist of damages, including, but not limited to, liquidated,  
24 compensatory, statutory, and punitive damages, as permitted by law;

25 4. For an award of prejudgment and post-judgment interest; and

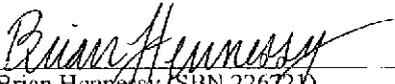
26 5. An award to craigslist of its costs of suit, including, but not limited to, reasonable  
27 attorneys' fees, as permitted by law;

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6. For such other relief as the Court deems just and proper.

DATED: November 5, 2008

PERKINS COIE LLP

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craigslist, Inc.

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**DEMAND FOR JURY TRIAL**

Plaintiff hereby demands a jury trial of all issues in the above-captioned action which are triable to a jury.

DATED: November 5, 2008

**PERKINS COIE LLP**

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