

1 JEDEDIAH WAKEFIELD (CSB No. 178058)
jwakefield@fenwick.com
2 FENWICK & WEST LLP
555 California Street, 12th Floor
3 San Francisco, California 94104
Telephone: (415) 875-2300
4 Facsimile: (415) 281-1350

5 KAREN WEBB (CSB NO. 233370)
kwebb@fenwick.com
6 FENWICK & WEST LLP
801 California Street
7 Mountain View, California 94041
Telephone: (650) 988-8500
8 Facsimile: (650) 938-5200

9 Attorneys for Plaintiff
10 TWITTER, INC.

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RICHARD W. WIEKING
CLERK U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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12 UNITED STATES DISTRICT COURT
13 NORTHERN DISTRICT OF CALIFORNIA
14 SAN FRANCISCO DIVISION

EDL

CV 11 4480

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16 TWITTER, INC., a Delaware Corporation,

CASE NO.

17 Plaintiff,

COMPLAINT FOR DECLARATORY
JUDGMENT AND CANCELLATION OF
TRADEMARK FROM FEDERAL
REGISTER

18 v.

DEMAND FOR JURY TRIAL

19 TWITTAD, LLC, an Iowa limited liability
20 company,

21 Defendant.

22
23 Plaintiff Twitter, Inc. ("Twitter") alleges as follows:

24 1. This action arises from the registration of the mark "LET YOUR AD MEET
25 TWEETS" by Twittad, LLC ("Twittad" or "Defendant") in connection with online advertising
26 services for use on Twitter. Defendant's LET YOUR AD MEET TWEETS registration unfairly
27 exploits the widespread association by the consuming public of the mark TWEET with Twitter,
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1 and threatens to block Twitter from its registration and legitimate uses of its own mark. In fact, it
2 appears that Defendant has used LET YOUR AD MEET TWEETS solely as a generic phrase to
3 refer to advertising in connection with Twitter itself, and as such it is incapable of serving as a
4 mark, rendering the registration subject to cancellation on that ground. Alternatively, if
5 Defendant is able to establish use of LET YOUR AD MEET TWEETS as a mark, its registration
6 is subject to cancellation based on Twitter's preexisting rights in the TWEET mark. Accordingly,
7 Twitter seeks cancellation of Twittad's LET YOUR AD MEET TWEETS trademark registration
8 under the Lanham Act 15 U.S.C. § 1052(d), § 1064 and § 1119.

9 **JURISDICTION AND VENUE**

10 2. This Court has personal jurisdiction over Twittad because, on information and
11 belief, defendant Twittad has sufficient contacts with this judicial district, including without
12 limitation through conducting of business within and marketing to consumers within this judicial
13 district. On information and belief, said contacts include, without limitation, contacts related to
14 Defendant' doing business in this District and use of the alleged mark LET YOUR AD MEET
15 TWEETS.

16 3. This Court has jurisdiction over this matter pursuant to 15 U.S.C. § 1121 and
17 28 U.S.C. §§ 1331, and 1338. Twitter's claims are based on violations of the Lanham Act, as
18 amended, 15 U.S.C. §§ 1051-1127.

19 4. Venue is proper in this district pursuant to 28 U.S.C. §1391(b) and (c). On
20 information and belief, Twittad uses the LET YOUR AD MEET TWEETS mark in this district to
21 advertise and sell its services, and Twitter is headquartered in this District.

22 **INTRADISTRICT ASSIGNMENT**

23 5. Pursuant to Civil L.R. 3-2(c), this action is to be assigned on a district-wide basis
24 because it is an intellectual property action.

25 **THE PARTIES**

26 6. Plaintiff Twitter is a Delaware corporation having its principal place of business at
27 795 Folsom Street, Suite 600, San Francisco, California 94107. Twitter is widely recognized for
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1 providing a popular social networking and micro-blogging platform throughout the United States
2 and worldwide.

3 7. Upon information and belief, Twittad has a principal place of business at 10605
4 Justin Drive, Urbandale, Iowa 50322. Upon information and belief, Twittad operates a website at
5 www.twittad.com and offers online advertising services exclusively in connection with Twitter's
6 services. Upon information and belief, Twittad conducts business and targets consumers
7 nationwide, including within the Northern District of California.

8 **TWITTER'S BUSINESS AND MARKS**

9 8. Twitter provides a social networking and communications platform for users to
10 post information and stay connected through the exchange of short, frequent messages. A
11 message shared via the Twitter service is referred to as a "Tweet." These Tweets are posted to a
12 user's Twitter profile or blog, sent to followers, and are searchable by Twitter's search engine.
13 Consumers access Twitter's services via Twitter's website, third-party websites, and mobile
14 applications.

15 9. Twitter's offerings are well-known around the world and throughout the United
16 States with over 100 million active users. Users of Twitter's service send over 200 million
17 Tweets per day.

18 10. Immediately after Twitter's launch, the TWEET mark became widely adopted by
19 consumers and media outlets to refer to Twitter. Prior to the public identifying TWEET with
20 Twitter, the TWEET mark was not generally known to the consuming public beyond its
21 dictionary meaning relating to birdsong, and had no association with web-based social
22 networking and communications services.

23 11. Twitter's continuing use and considerable investment in the TWEET mark has
24 created significant consumer recognition and goodwill associated with Twitter and its TWEET
25 mark. The public has come to know TWEET as an indication of services that originate from
26 Twitter.

27 12. To help protect this goodwill and investment, Twitter has filed trademark
28 applications for the TWEET mark.

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1 13. Twitter also owns a family of TWEET marks which are identified by the TWEET
2 mark along with a short prefix or suffix – such as COTWEET, RETWEET and TWEETDECK.
3 Accordingly, consumers would likely be confused by Defendant’s trademark use of LET YOUR
4 AD MEET TWEETS, which shares the dominant TWEET term, and would appear to be part of
5 Twitter’s family of marks.

6 **TWITTAD’S BUSINESS AND MARKS**

7 14. On information and belief, Twittad maintains a website at www.twittad.com and
8 offers online advertising services specifically for use on Twitter and in connection with Twitter’s
9 services, including to consumers in California.

10 15. On July 2, 2008, Filmfitti, LLC (“Filmfitti”) filed an intent-to-use federal
11 trademark application to register LET YOUR AD MEET TWEETS for “Dissemination of
12 advertising for others via the internet; online advertising services for others, namely, providing
13 advertising space on internet websites; compilation of advertisements on webpages; providing
14 advertising space on the internet” in class 35, under Serial No. 77513740.

15 16. On information and belief, Filmfitti applied to register a TWEET-based mark
16 solely as a reference to Twitter and to exploit the popularity and fame of Twitter’s TWEET brand.
17 However, Filmfitti’s application failed to disclose to the U.S. Patent and Trademark Office
18 (“PTO”) that the services were intended solely for use in connection with Twitter’s services.

19 17. After receiving a Notice of Allowance from the PTO, Filmfitti, LLC filed a
20 Statement of Use on August 17, 2009, alleging use since September 1, 2008. The PTO granted
21 registration on October 20, 2009, and issued a Certificate of Registration, registration number
22 3,699,994 (the “‘994 Registration”).

23 18. Upon information and belief, neither Filmfitti nor Twittad have used LET YOUR
24 AD MEET TWEETS as a trademark or service mark in commerce in the United States, in
25 connection with the services identified in the ‘994 Registration or otherwise.

26 19. On March 24, 2011, Filmfitti recorded an assignment, purportedly assigning its
27 entire interest in the LET YOUR AD MEET TWEETS registration to Twittad.
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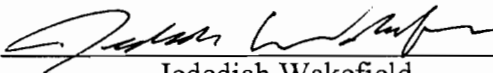
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C. For such other different and further relief as the Court deems just and proper.

Dated: September 8, 2011

FENWICK & WEST LLP

By: 
Jedediah Wakefield

Attorneys for Plaintiff
TWITTER, INC.

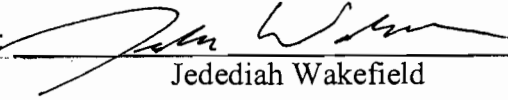
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DEMAND FOR JURY TRIAL

Plaintiff Twitter, Inc. hereby demands a jury trial on all issues so triable.

Dated: September 8, 2011

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By: 
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TWITTER, INC.

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