

Viewing: California Judge “Likes” Facebook Settlement; »

California Judge “Likes” Facebook Settlement; Privacy Advocates, Not So Much

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On December 3, 2012, a California judge granted [preliminary approval](#) of a settlement of a class action lawsuit over Facebook’s “[Sponsored Stories](#)” feature. In the [lawsuit](#) (*Fraleigh v. Facebook, Inc.*, Case No. 11-cv-01726 (N.D. Cal.)), plaintiffs allege that Facebook’s use of their name and profile picture in connection with advertisers they “like” violates their privacy rights. The plaintiffs asserted that users are unable to opt out of the Sponsored Stories feature even though Facebook’s [terms of use](#) provide otherwise:

“You can use your privacy settings to limit how your name and profile picture may be associated with commercial, sponsored, or related content (such as a brand you like) served or enhanced by us. You give us permission to use your name and profile picture in connection with that content, subject to the limits you place.”

Under the [settlement](#), Facebook pays \$20 million into a fund for class members who appeared in a Sponsored Story. Depending on how many there are, individual class members may get anything from \$0 (if there are so many claimants that distributing the funds would not be economically feasible) to \$10 each. The fund also will be used to pay any costs and attorney fees awarded by the court.

The settlement also requires Facebook to revise its terms of use to state:

“You give us permission to use your name, profile picture, content, and information in connection with commercial, sponsored, or related content (such as a brand you like) served or enhanced by us. This means, for example, that you permit a business or other entity to pay us to display your name and/or profile picture with your content or information. If you have selected a specific audience for your content or information, we will respect your choice when we use it.”

The settlement also requires Facebook to:

- “create an easily accessible mechanism that enables users to view, on a going-forward basis, the subset of their interactions and other content on Facebook that have been displayed in Sponsored Stories (if any)”; and
- “engineer settings to enable users, upon viewing the interactions and other content that are being displayed in Sponsored Stories, to control which of these interactions and other content are eligible to appear in additional Sponsored Stories.”

The court’s approval follows an [August 2012 order](#) disapproving a previous settlement agreement. That agreement required Facebook to pay \$10 million to privacy organizations and up to \$10 million in attorney fees. The judge questioned the propriety of a settlement that provides no monetary relief directly to class members, which, due to the size of the class—possibly more than 70 million people—arguably would have been impractical. The judge also questioned whether \$10 million represents a reasonable settlement of past damages claims.

The settlement achieves plaintiffs’ primary objective in filing the lawsuit, which was to change Facebook’s practices, and in particular, to allow users to give informed consent and to opt out of Sponsored Stories. [Privacy advocates](#), however, view the settlement as having little positive impact on social media privacy rights in the long run, as social media sites will find new ways to monetize subscribers. Until the legal framework for privacy rights catches up with technology (it may never), the tug-of-war between privacy rights and social media rages on.

About Jason Gonder

Jason Gonder is an associate in the Intellectual Property Practice Group in the Silicon Valley office of Haynes and Boone. He represents clients in intellectual property law including patent litigation, trade secret litigation, trademark and trade dress litigation and enforcement, trademark opposition and cancellation proceedings in the Patent and Trademark Office, prosecution of trademark applications, trademark clearance, copyright litigation, domain name disputes, intellectual property due diligence investigations, and intellectual property counseling and strategic planning. Jason also represents clients in all areas of general commercial litigation. He may be reached at jason.gonder@haynesboone.com or 408.660.4145.