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 19 LAMEBOOK, LLC

20 UNITED STATES DISTRICT COURT
 21 NORTHERN DISTRICT OF CALIFORNIA

22 FACEBOOK, INC.,

23 Plaintiff,

24 v.

25 LAMEBOOK LLC,

26 Defendant.
 27

Case No. 3:10-CV-05048-RS

**JOINT CASE MANAGEMENT STATEMENT
 AND RULE 26(F) REPORT**

1 Pursuant to Federal Rule of Civil Procedure 26(f), a conference was held on February 9,
2 2011, between Anne H. Peck and Jeffrey T. Norberg of Cooley LLP, counsel to Plaintiff
3 Facebook, Inc. (“Facebook”); and Conor M. Civins, Edward A. Cavazos, and Joseph C. Gratz,
4 counsel to Defendant Lamebook, Inc. (“Lamebook”). The parties submit this Case Management
5 Statement and Rule 26(f) Report pursuant to Local Rule 16-9(a), the March 1, 2007 Standing
6 Order for All Judges of the Northern District of California, and this Court’s Notice Scheduling
7 Initial Case Management Conference (D.I. 8).

8 DESCRIPTION OF THE CASE

9 1. JURISDICTION AND SERVICE

10 This court has subject matter jurisdiction over Facebook’s claims under 28 U.S.C. §§1331
11 and 1338(a), as the case involves a dispute regarding alleged trademark infringement and
12 violations of the Anti-Cybersquatting Consumer Protection Act under 15 U.S.C. § 1125. This
13 Court has supplemental jurisdiction over state law claims under 28 U.S.C. § 1367. Facebook
14 asserts that venue is proper in this Court under 28 U.S.C. § 1391, as Facebook maintains its
15 principal place of business in this District and a substantial part of the events giving rise to the
16 claims at issue occurred in this District. Lamebook has moved to dismiss this action in favor of
17 an earlier-filed suit in the Western District of Texas. All parties have been served.

18 2. FACTS

19 A. Facebook Statement

20 Facebook is a prominent provider of online networking services and is dedicated to
21 making the web more social, personalized, smarter and relevant. Through Facebook’s website,
22 the Facebook Platform, Social Plugins and other tools, hundreds of millions of Facebook users
23 enjoy personalized and relevant internet experiences. Facebook has provided its services under
24 the FACEBOOK trademark since February 4, 2004. The FACEBOOK trademark is a famous
25 mark under 15 U.S.C. § 1125(c)(2)(A).

26 Facebook alleges that Lamebook misappropriated the FACEBOOK brand by adopting,
27 using and applying to register the confusingly similar and dilutive LAMEBOOK trademark.
28 Facebook further alleges that Lamebook misappropriated Facebook’s WALL trademark.

1 Facebook alleges that Lamebook's acts as stated in the complaint give rise to a likelihood of
2 dilution and consumer confusion in the marketplace in violation of the Lanham Act and common
3 law. Facebook also asserts claims for violations of the Anti-Cybersquatting Consumer Protection
4 Act arising out of Lamebook's registration of the lamebook.com domain name, common law
5 trademark infringement, and unfair competition in violation of Cal. Bus. & Prof. Code §§ 17200,
6 *et seq.*

7 On November 4, 2010, after months of settlement discussions and representing to
8 Facebook that it was considering changing its name to "Lameblog," Lamebook filed a declaratory
9 relief action in the Western District of Texas styled *Lamebook, LLC v. Facebook, Inc.*, Civil
10 Action No. 1:10-cv-00833 (the "Texas Action"). Facebook has filed a motion to dismiss the
11 Texas Action on the ground that it is an improper anticipatory lawsuit. That motion is currently
12 pending.

13 **B. Lamebook Statement**

14 Defendant Lamebook, LLC is a two-person company located in Austin, Texas.
15 Lamebook operates an eponymous blog which makes fun of Facebook and its users.

16 Facebook doesn't like being made fun of. It asked Lamebook to switch to another name,
17 apparently fearing that confused web surfers might think that Facebook was making fun of itself
18 and its own users. The parties entered into discussions about resolving their dispute. The back-
19 and-forth lasted for eight months, and Lamebook faced substantial uncertainty about the matter
20 which affected its ability to operate its business. Lamebook brought an action in federal court in
21 Austin, Texas, where all of its operations are located, and where Facebook operates an office.
22 That action, filed in the United States District Court for the Western District of Texas, seeks a
23 declaration that it is not a violation of the trademark laws to operate a blog about why Facebook
24 is lame and call it "Lamebook."

25 Several days later, Facebook filed this lawsuit. Lamebook has filed a motion to dismiss
26 this lawsuit on the ground that the Texas Action was filed earlier and deals with substantially
27 similar issues. That motion is currently pending.

28 **3. LEGAL ISSUES**

1 Facebook submits that the following principal legal issues are in dispute:

2 (a) Whether Lamebook is liable for dilution of the FACEBOOK mark pursuant to 15
3 U.S.C. § 1125 and/or California Bus. & Prof. Code §14247;

4 (b) Whether Lamebook is liable for false designation of origin under 15 U.S.C. §
5 1125;

6 (c) Whether Lamebook is liable for infringement of the FACEBOOK mark pursuant
7 to 15 U.S.C. § 1114, and/or common law;

8 (d) Whether Lamebook is liable for violation of the Anti-Cybersquatting Consumer
9 Protection Act under 15 U.S.C. § 1125(d);

10 (e) Whether Lamebook is liable for infringement of Facebook's WALL mark pursuant
11 to 15 U.S.C. § 1114, and/or common law;

12 (f) Whether Lamebook is liable for unfair competition under the common law;

13 (g) Whether Lamebook is liable for violation of California Bus. & Prof. Code §17200,
14 *et seq.*;

15 (h) Whether Facebook is entitled to injunctive relief; and

16 (i) The determination of the appropriate measure of money remedies to which
17 Facebook is entitled.

18 Lamebook respectfully submits that before any of the above issues may be addressed, this
19 case should be dismissed in favor of the earlier-filed Texas Action.

20 **4. MOTIONS**

21 Lamebook's Motion to Dismiss this matter in favor of the Texas Action is currently
22 pending. Lamebook's Complaint for Declaratory Relief and Facebook's Motion to Dismiss
23 concerning this matter in the U.S. District Court for the Western District of Texas, Austin
24 Division, *Lamebook, LLC v. Facebook, Inc.*, Civil Action No. 1:10-cv-00833 are currently
25 pending in the Western District of Texas. The parties anticipate that summary judgment motions
26 will be filed after the close of discovery.

27 **5. AMENDMENT OF PLEADINGS**

28 The parties do not anticipate any amendments to its pleadings at this time, but may seek to

1 add additional claims as discovery proceeds.

2 **6. EVIDENCE PRESERVATION**

3 The parties have taken reasonable steps to preserve documents relating to the issues
4 presented in the complaint based on their current understanding of the issues. Among other
5 things, the parties have issued document preservation instructions to the key individuals likely to
6 have such documents, directing such individuals to take affirmative steps to preserve such
7 documents, whether in hard copy or electronic form, and to suspend applicable document
8 destruction/deletion policies.

9 **7. DISCLOSURES**

10 The parties will exchange initial disclosures on February 24, 2011.

11 **8. DISCOVERY**

12 Facebook does not at this time seek any modifications to the scope of discovery as
13 provided under the applicable Federal Rules of Civil Procedure. Facebook proposes pursuing
14 discovery by taking depositions and by serving document requests, interrogatories, and requests
15 for admission, subject to the following discovery plan:

16 (a) Protective Order: A protective order will be necessary due to the sensitive and
17 proprietary information that will be exchanged during discovery. The parties will meet and
18 confer on and submit a proposed stipulated protective order no later than March 15, 2011 in a
19 form that is consistent with the Court's Model Protective Orders.

20 (b) Privilege Logs: Communications with outside litigation counsel related to this specific
21 action and work product prepared by outside litigation related to this specific action do not need
22 to be logged.

23 (c) Production: The parties will produce documents and other electronically stored
24 information electronically (e.g., on compact discs) in single-page TIFF format with corresponding
25 text files and Concordance compatible load files, or in native format. To the extent either party
26 believes, on a case-by-case basis, that documents should be produced in an alternative format, the
27 parties will meet and confer in good faith concerning such alternative production arrangements.
28 The parties will also meet and confer in good faith to ensure that the format of each party's

1 production is compatible with the technical requirements of the receiving party's document
2 management system.

3 **9. CLASS ACTIONS**

4 This case is not a class action.

5 **10. RELATED CASES**

6 Lamebook has filed a declaratory relief action against Facebook concerning this matter in
7 the U.S. District Court for the Western District of Texas, Austin Division, *Lamebook, LLC v.*
8 *Facebook, Inc.*, Civil Action No. 1:10-cv-00833. Facebook has filed a motion to dismiss that
9 action. That motion is currently pending.

10 **11. RELIEF**

11 Facebook seeks judgment that Lamebook has infringed and continues to infringe the
12 FACEBOOK and WALL marks. Facebook seeks a determination that Lamebook's acts of
13 infringement have been and are willful. Facebook further seeks judgment that Lamebook has
14 diluted and continues to dilute the FACEBOOK mark. Facebook further seeks judgment that
15 Lamebook has violated federal and state laws prohibiting unfair competition and false designation
16 of origin, and that Lamebook's registration of the lamebook.com domain was in violation of the
17 Anti-Cybersquatting Consumer Protection Act.

18 Facebook seeks a permanent injunction, treble damages and attorney's fees, compensatory
19 and/or statutory damages, and an accounting and disgorgement of Lamebook's revenues and
20 profits derived from its wrongful use of the infringing trademark. Facebook also seeks an order
21 requiring Lamebook to (a) transfer the lamebook.com domain name and all other infringing
22 domain names to Facebook; and (b) deliver up all promotional materials bearing the infringing
23 trademark. Finally, Facebook seeks an order requiring Lamebook to abandon all pending
24 trademark applications for the Lamebook mark, and/or deeming Lamebook's pending Lamebook
25 application void *ab initio*. Facebook also seeks such other relief at law and in equity as the Court
26 may deem just and proper.

27 Because Lamebook has moved to dismiss this action in favor of the earlier-filed Texas
28 Action, it has not filed an Answer or Counterclaims, and has not yet identified any relief it may

1 seek.

2 **12. SETTLEMENT AND ADR**

3 The parties have met and conferred regarding ADR pursuant to Civil L.R. 16-8 and ADR
4 L.R. 3-5 but were unable to reach an agreement on ADR. The Court's ADR unit has scheduled a
5 conference call with the parties for February 28, 2011.

6 **13. CONSENT TO MAGISTRATE JUDGE FOR ALL PURPOSES**

7 Facebook has declined to have this case proceed before a magistrate judge.

8 **14. OTHER PREFERENCES**

9 The parties do not believe that this case is suitable for reference to binding arbitration or
10 to a Special Master. This case is also inappropriate for reference to the Judicial Panel on
11 Multidistrict Litigation at this time.

12 **15. NARROWING OF ISSUES**

13 The parties are not aware of any issues that can be narrowed by agreement or by motion
14 and do not have any suggestions to expedite the presentation of evidence at this time. The parties
15 anticipate that as discovery proceeds, the issues for trial may be narrowed.

16 **16. EXPEDITED SCHEDULE**

17 At this time, the parties do not believe that this case is appropriate for expedited
18 procedure.

19 **17. SCHEDULING**

20 The parties propose the following schedule:

21 Exchange of Initial Disclosures: February 24, 2011

22 Initial Case Management Conference: March 3, 2011

23 Last Day to Amend Pleadings: September 19, 2011

24 Non-Expert Discovery Cutoff: October 31, 2011

25 Designation of Experts and Exchange of Expert Reports: November 21, 2011

26 Designation of Rebuttal Expert Witnesses and Exchange of Rebuttal Expert Reports:
27 December 19, 2011

28 Expert Discovery Cutoff: January 16, 2012

1 Last Day to File Dispositive Motions: February 6, 2012

2 Pretrial Conference: March 5, 2012

3 Trial: March 19, 2012

4 **18. TRIAL**

5 Facebook has demanded a jury trial. At this time, Facebook estimates that the length of
6 trial is likely to be 5-10 court days. Lamebook estimates that the length of trial is likely to be 3-5
7 court days.

8 **19. DISCLOSURE OF NON-PARTY INTERESTED ENTITIES OR PERSONS**

9 Facebook filed its disclosure of non-party interested entities at the time of filing its
10 complaint. Lamebook has no parent and no publicly held company directly or indirectly owns
11 10% or more of Lamebook, LLC's stock.

12 **20. OTHER MATTERS**

13 The parties agree to service by electronic mail pursuant to Federal Rule of Civil Procedure
14 59(b)(2)(E).

14 Dated: February 24, 2011

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GENERAL ORDER 45 ATTESTATION

In accordance with General Order 45, concurrence in the filing of this document has been obtained from each of the signatories and I shall maintain records to support this concurrence for subsequent production for the Court if so ordered or for inspection upon request by a party.

/s/ Jeffrey T. Norberg
Jeffrey T. Norberg
Attorneys for Plaintiff
FACEBOOK, INC.