

1 STEPHEN S. SMITH (SBN 166539)  
 2 [SSmith@GreenbergGlusker.com](mailto:SSmith@GreenbergGlusker.com)  
 3 WILLIAM M. WALKER (SBN 145559)  
 4 [WWalker@GreenbergGlusker.com](mailto:WWalker@GreenbergGlusker.com)  
 5 AARON J. MOSS (SBN 190625)  
 6 [AMoss@GreenbergGlusker.com](mailto:AMoss@GreenbergGlusker.com)  
 7 GREENBERG GLUSKER FIELDS CLAMAN &  
 8 MACHTINGER LLP  
 9 1900 Avenue of the Stars, 21st Floor  
 10 Los Angeles, California 90067-4590  
 11 Telephone: 310.553.3610  
 12 Fax: 310.553.0687

13 Attorneys for Defendants StudiVZ Ltd., Holtzbrinck  
 14 Networks GmbH and Holtzbrinck Ventures GmbH

15 UNITED STATES DISTRICT COURT  
 16 NORTHERN DISTRICT OF CALIFORNIA  
 17 SAN JOSE DIVISION

GREENBERG GLUSKER FIELDS CLAMAN  
 & MACHTINGER LLP  
 1900 Avenue of the Stars, 21st Floor  
 Los Angeles, California 90067-4590

18 FACEBOOK, INC.,  
 19 Plaintiff,

20 v.

21 STUDIVZ LTD., VERLAGSGRUPPE  
 22 GEORG VON HOLTZBRINCK GmbH,  
 23 HOLTZBRINCK NETWORKS GmbH,  
 24 HOLTZBRINCK VENTURES GmbH, and  
 25 DOES 1-25,  
 26 Defendants.

Case No. 5:08-CV-03468 JF  
 Assigned To: Hon. Jeremy Fogel

**SUPPLEMENTAL DECLARATION OF  
 STEPHEN S. SMITH IN SUPPORT OF  
 STUDIVZ LTD.'S MOTION TO DISMISS  
 FOR LACK OF PERSONAL JURISDICTION  
 AND FORUM NON CONVENIENS;  
 EXHIBIT K**

[Reply Briefs; Supplemental Declarations of  
 William M. Walker and Martin Weber (and  
 Exhibits Thereto) Filed Concurrently]

Date: April 10, 2009  
 Time: 9:00 a.m.  
 Place: Courtroom 3

Complaint Filed: July 18, 2008

**DECLARATION OF STEPHEN S. SMITH**

I, Stephen S. Smith declare:

1. I am an attorney at law duly licensed to practice in the State of California and before the United States District Court for the Northern District of California, and am a partner at Greenberg Glusker Fields Claman & Machtinger LLP, counsel of record for Defendants Holtzbrinck Networks GmbH and Holtzbrinck Ventures GmbH (together, the “Holtzbrinck Defendants”) and StudiVZ Ltd. (“StudiVZ”) (collectively, “Defendants”). I have personal knowledge of the facts set forth herein and, if called as a witness, could and would testify competently thereto under oath. This declaration is submitted concurrently with Defendants’ Reply Briefs in support of their Motions to Dismiss and in support of those motions.

2. Within the past few weeks, I joined Facebook.com for the sake of seeing whether Facebook’s users are required to click an “I accept” or “Yes” button showing they assented to Facebook’s Terms of Use before registering for, and entering, Facebook’s website. When I clicked the “Sign Up” button, I was never required to view or assent to the terms to which Facebook would have its users be bound. In fact, Facebook’s homepage does not even contain a warning near the “Sign Up” button that the user is agreeing to the terms of service by signing up; the only notice is a tiny “Terms” link at the very bottom of the page hidden among eight other links. Attached hereto as “Exhibit K” is a true and correct copy of Facebook’s homepage that I saved earlier this week (with the assistance of a colleague who is more computer-literate than I am).

3. Facebook’s website does not contain a notice on any of its pages stating that “by continuing past this page and/or using this site, you agree to abide by the Terms of Use for this site”

///  
///  
///

1 or any words to that effect.

2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

I declare under penalty of perjury under the laws of the State of California and the United States that the foregoing is true and correct, and that this declaration was executed in Los Angeles, California on March 27, 2009.

/s Stephen S. Smith

Stephen S. Smith

**GREENBERG GLUSKER FIELDS CLAMAN  
& MACHTINGER LLP**  
1900 Avenue of the Stars, 21st Floor  
Los Angeles, California 90067-4590