

1 I. NEEL CHATTERJEE (STATE BAR NO. 173985)  
 nchatterjee@orrick.com  
 2 JULIO C. AVALOS (STATE BAR NO. 255350)  
 javalos@orrick.com  
 3 ORRICK, HERRINGTON & SUTCLIFFE LLP  
 1000 Marsh Road  
 4 Menlo Park, CA 94025  
 Telephone: +1-650-614-7400  
 5 Facsimile: +1-650-614-7401

6 THOMAS J. GRAY (STATE BAR NO. 191411)  
 tgray@orrick.com  
 7 ORRICK, HERRINGTON & SUTCLIFFE LLP  
 4 Park Plaza  
 8 Suite 1600  
 Irvine, CA 92614-2558  
 9 Telephone: +1-949-567-6700  
 Facsimile: 949-567 6710

10 Attorneys for Plaintiff  
 11 FACEBOOK, INC.

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

15  
 16 FACEBOOK, INC.,

17 Plaintiff,

18 v.

19 STUDIVZ LTD., HOLTZBRINCK  
 20 NETWORKS GMBH, HOLTZBRINCK  
 VENTURES GMBH, DENNIS BEMMANN,  
 21 MICHAEL BREHM, AND DOES 1-25,

22 Defendants.

Case No. 5:08-cv-03468 JF

**FIRST AMENDED AND  
 SUPPLEMENTAL COMPLAINT FOR**

1. **VIOLATION OF THE COMPUTER FRAUD AND ABUSE ACT, 18 U.S.C. SECTION 1030;**
2. **VIOLATION OF CALIFORNIA PENAL CODE SECTION 502;**
3. **TRADE DRESS INFRINGEMENT, 15 U.S.C. SECTION 1125;**
4. **BREACH OF CONTRACT;**
5. **BREACH OF IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING;**
6. **TORTIOUS INTERFERENCE;**
7. **CALIFORNIA COMMON LAW MISAPPROPRIATION;**
8. **CIVIL CONSPIRACY.**

**DEMAND FOR JURY TRIAL**

1 Plaintiff Facebook, Inc. (“Facebook”) alleges against Defendants StudiVZ Ltd.  
2 (“StudiVZ”), Holtzbrinck Networks GmbH (“HNG”), Holtzbrinck Ventures GmbH (“HVG”),  
3 Michael Brehm, Dennis Bemmann and Does 1-25 inclusive (collectively, “Defendants”), as  
4 follows:

### 5 INTRODUCTION

6 1. This is a case to stop Defendants from running a knockoff of Facebook’s website.  
7 StudiVZ.net, launched a year and a half after the debut of Facebook.com, was built by copying  
8 Facebook’s look, feel, features and services. StudiVZ’s founders have publicly admitted as  
9 much. Capitalizing on its theft and Facebook’s success, StudiVZ has quickly expanded from its  
10 native Germany to many other nations throughout Europe. StudiVZ’s success is due to its theft  
11 and misuse of Facebook’s intellectual property. This was known to Defendants Holtzbrinck  
12 Networks and Holtzbrinck Ventures when they invested more than one hundred million dollars in  
13 StudiVZ, obtaining full control of the company and the right and ability to control and conduct its  
14 affairs. The Holtzbrinck Defendants invested knowing of StudiVZ’s infringement, and after  
15 obtaining operational control of the company, directed the company to continue its willfully  
16 infringing course in order to preserve its substantial investment. Defendants continued their  
17 willful infringement knowing that it was harming Facebook in California.

18 2. StudiVZ does not and cannot provide the same level of quality user experience as  
19 Facebook, and Facebook has no ability to control StudiVZ’s user experience. Because StudiVZ  
20 looks like Facebook and incorporates nearly identical features and functionality to Facebook,  
21 users have and will continue incorrectly to believe that StudiVZ is associated with Facebook.  
22 Facebook does not want the goodwill it has worked so hard to build to suffer because of the  
23 failure of StudiVZ to adhere to the same standards of quality, privacy and service as Facebook.  
24 Facebook, therefore, seeks to end StudiVZ’s illegal activity to ensure that users are not confused  
25 and that Facebook’s reputation remains unharmed.

26 ///

27 ///

28 ///

**PARTIES**

1  
2           3.       Facebook, Inc. is a Delaware corporation with its principal place of business at 156  
3 University Avenue, Palo Alto, California. Facebook operates all of its servers in and/or from  
4 California and has done so since June 2004.

5           4.       Plaintiff is informed and believes and thereupon alleges that Defendant StudiVZ  
6 Ltd. is a German entity headquartered at Saarbrucker Str. 38, D-10405, Berlin, Germany.  
7 StudiVZ operates numerous websites, including StudiVZ.net, MeinVZ.net, and a number of  
8 versions of the StudiVZ site translated into various European languages.

9           5.       Plaintiff is informed and believes and thereupon alleges that Defendant  
10 Holtzbrinck Networks GmbH (“HNG”) is a German entity headquartered at Bayerstrade 21,  
11 80335, Munich, Germany.

12           6.       Plaintiff is informed and believes and thereupon alleges that Defendant  
13 Holtzbrinck Ventures GmbH (“HVG” or, collectively with HNG, the “Holtzbrinck Defendants”)  
14 is a German entity headquartered at Bayerstrade 21, 80335, Munich, Germany.

15           7.       Plaintiff is informed and believes and thereupon alleges that individual Defendant  
16 Michael Brehm is a German citizen residing in Berlin, Germany. In addition to serving as  
17 Defendant StudiVZ’s Chief Operating Officer since June 2006, Mr. Brehm is often credited as  
18 being one of StudiVZ’s “founders.”

19           8.       Plaintiff is informed and believes and thereupon alleges that individual Defendant  
20 Dennis Bemann is a German citizen residing in Berlin, Germany. Mr. Bemann is one of the  
21 “founders” of StudiVZ and is believed to have been the primary force behind its programming  
22 and the wholesale copying of Facebook.

23           9.       Plaintiff has not yet fully and independently identified the true names and  
24 capacities of the Defendants sued herein as Does 1-25, inclusive, and therefore sues those  
25 Defendants by such fictitious names. Plaintiff reserves the right to amend this complaint to allege  
26 such Defendants’ true names and capacities when they are ascertained. Plaintiff is informed and  
27 believes and thereupon alleges that each of the fictitiously designated Defendants was a  
28 participant in the acts alleged herein, such that each is jointly and severally responsible for the

1 acts and omissions complained of herein.

2 **JURISDICTION AND VENUE**

3 10. This is a civil action for violations of the Computer Fraud and Abuse Act, 18  
4 U.S.C. § 1030, the Lanham Act, 15 U.S.C. 1125 et seq., California Penal Code 502(c), breach of  
5 contract, breach of the covenant of good faith and fair dealing, tortious interference with contract,  
6 common law misappropriation and civil conspiracy.

7 11. The Court has jurisdiction over the Computer Fraud and Abuse Act and the  
8 Lanham Act claims pursuant to 28 U.S.C. § 1331. The Court has supplemental jurisdiction over  
9 the remaining claims pursuant to 28 U.S.C. § 1367.

10 12. During all relevant times herein, Facebook, Inc. has operated its websites,  
11 [www.thefacebook.com](http://www.thefacebook.com) and [www.facebook.com](http://www.facebook.com), from servers and offices located in California.  
12 Facebook is informed and believes that Defendants were and are aware that Facebook operated its  
13 business from California during all relevant times herein.

14 13. During all relevant times herein, Defendants have repeatedly and intentionally  
15 accessed Facebook servers located in California. *See* Cal. Penal Code § 502(j). Defendants have  
16 maintained systematic and continuous contacts with California while engaging in the acts  
17 described in this complaint. During all relevant times herein, Defendants had to be aware that  
18 their wrongful acts would harm Facebook in California.

19 14. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391(b) and 1391(c). On  
20 information and belief, the wrongful acts causing injuries were initiated at various times from the  
21 United States (possibly even California), Germany and other locations directed at persons and  
22 equipment in the County of Santa Clara, California. Therefore, the causes of action arise and the  
23 harm inflicted occurred primarily in the County of Santa Clara.

24 15. Finally, through their use of Facebook's website and service and their direct or  
25 indirect use of registered Facebook User's accounts, Defendants have consented to venue and  
26 jurisdiction in the state and federal courts of California.

27  
28



1 particular “friend” is able to see. These privacy controls create a safer and more trustworthy  
2 environment for users of the Facebook service. These controls have contributed substantially to  
3 Facebook’s success and goodwill.

4 20. In addition to its privacy controls, Facebook has expended significant resources  
5 and gone to great effort to create a service that excels in creativity, functionality, originality, and  
6 that provides users with an optimal experience. Its success can be attributed to the unique look  
7 and feel of its website and user interface, the accompanying functionality to navigate the website  
8 and the privacy controls.

9 21. The look and feel of Facebook is made up by a variety of carefully designed  
10 components, some of which are more obvious to a typical user than others. For example,  
11 Facebook features include the ability to “poke” another user or to write on another user’s “wall,”  
12 a kind of message board. Facebook’s “Search” feature allows users to search for and connect  
13 with friends and acquaintances with whom they have lost touch. Facebook provides feeds or  
14 streams that allow users to keep updated on the activities and information shared by their friends.  
15 Other components of Facebook’s design, look and feel are more subtle. For example, Facebook  
16 has honed the font that is used on its site, the size and location of text, the size and location of  
17 uploaded pictures, the features that it offers, the location of hyperlinks for those features, and the  
18 location of advertisements and other banners. Facebook has planned where user-posted messages  
19 are viewed on a webpage, what particular designs are to be used, as well as the use of certain  
20 graphics, pictures, video, information, applications, music, sound and other files and their  
21 selection and arrangement on the Facebook site. Each and every one of these components  
22 culminates in a unique user experience. As discussed above, Facebook has also put into place  
23 privacy controls allowing users a multitude of options to choose from to protect their data. The  
24 user is given more freedom to control what other users can see.

25 22. All aspects of the Facebook website, services and data are maintained on  
26 Facebook’s computer servers located in or controlled from California. These computers are  
27 owned and operated by Facebook, and access to them is restricted under Facebook’s Terms of  
28 Use.

1 FACEBOOK TERMS OF USE

2 23. Anyone who accesses or uses Facebook’s website at [www.facebook.com](http://www.facebook.com) must  
3 signify that they have read and agree to be bound by Facebook’s Terms of Use, whether or not  
4 they are a registered member of Facebook. Although there have been slight changes made to the  
5 Terms of Use from 2004 to the present date, each iteration has remained substantively the same.  
6 See attached **Exhibit 2**, collecting pertinent excerpts from the Terms of Use in place for the years  
7 2004, 2005, 2006 and the present date (the full Terms of Use currently in place are available at  
8 <http://www.facebook.com/terms.php>.) Unless otherwise noted, citations to the Facebook Terms  
9 of Use are drawn from the Terms effective as of June 28, 2005.

10 24. Only those individuals who agree to Facebook’s Terms of Use are authorized to  
11 access or browse Facebook’s website, thereby becoming a User. If a person fails to agree to the  
12 Terms of Use, that person will be unable to pass beyond the log-in page attached as **Exhibit 3**.

13 25. Accordingly, all users of the Facebook website, whether registered or unregistered,  
14 agree under the Facebook Terms of Use not to copy Facebook’s site content, not to use it for  
15 commercial purposes and, users agree that the Facebook service and website are available only  
16 for personal, non-commercial use. Users acknowledge that acting in a contrary manner constitutes  
17 a violation of the terms of the agreement.

18 26. In pertinent part the 2005 Terms of Use provided:

19 You understand that the Web site is available for your personal,  
20 non-commercial use only. You agree that no materials of any kind  
21 submitted through your account will violate or infringe upon the  
22 rights of any third party, including copyright, trademark, privacy or  
23 other personal or proprietary rights; or contain libelous, defamatory  
24 or otherwise unlawful material. You further agree not to harvest or  
25 collect email addresses or other contact information of members  
26 from the Web site by electronic or other means for the purposes of  
27 sending unsolicited emails or other unsolicited communications.  
28 Additionally, you agree not to use automated scripts to collect  
information from the Web site or for any other purpose. You further  
agree that you may not use Web site in any unlawful manner or in  
any other manner that could damage, disable, overburden or impair  
[the Facebook] Web site.

...

1 All content on Web site, including but not limited to design, text,  
2 graphics, other files, and their selection and arrangement (the  
3 “Content”), are the proprietary property of Thefacebook or its  
4 licensors. All rights reserved. The Content may not be modified,  
5 copied, distributed, framed, reproduced, republished, downloaded,  
6 displayed, posted, transmitted, or sold in any form or by any means,  
7 in whole or in part, without Web site’s prior written permission.  
8 You may download or print a copy of any portion of the Content  
9 solely for your personal, non-commercial use, provided that you  
10 keep all copyright or other proprietary notices intact. You may not  
11 republish Content on any Internet, Intranet or Extranet site or  
12 incorporate the information in any other database or compilation.  
13 Any other use of the Content is strictly prohibited. All trademarks,  
14 logos, trade dress and service marks on the Web site are either  
15 trademarks or registered trademarks of Thefacebook or its licensors  
16 and may not be copied, imitated, or used, in whole or in part,  
17 without the prior written permission of Thefacebook.

18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29. By assenting to Facebook’s Terms of Use, Facebook users also “consent to, and  
waive all defenses of lack of personal jurisdiction and forum non conveniens with respect to,  
venue and jurisdiction in the state and federal courts of California.”

30. Facebook requires its users to agree to the site’s Terms of Use and related privacy  
policies so that, among other reasons, it can ensure the protection of users’ private information.  
Given the nature of the Facebook service and the often personal nature of the information that  
Facebook users post to their profiles, Facebook has invested significant resources in developing  
its privacy protocols and in making the Facebook experience a safe one for all of its users.

**STUDIVZ CREATES A WEBSITE THAT ADMITTEDLY COPIES FACEBOOK**

29. The success of Facebook’s interface and design has given rise to efforts by others  
to capitalize on the significant investment made by Facebook. These people and organizations  
seek to inappropriately associate themselves with Facebook and its substantial global goodwill.  
StudiVZ operates just such a copycat website, perhaps the largest of its kind.

30. The Facebook website and service launched in February 2004 on the Harvard  
University campus. Within months, it had become a nationwide phenomenon. In June 2004,  
Facebook relocated to Palo Alto, California, where it has remained ever since. By summer 2005,  
Facebook had grown to well over six million users.



1           31.     Around this same time, upon information and belief, two German university  
2 students traveled to the United States on internships. The first, Ehssan Dariani, worked at a start-  
3 up company named Spreadshirt, Inc., which maintains offices in Boston, Massachusetts and  
4 Greensburg, Pennsylvania. In addition to working at his internship, Mr. Dariani admitted that  
5 while in the United States, he was “looking for the next big thing.” *See* attached **Exhibit 4**.

6           32.     Upon information and belief, as part of his internship at Spreadshirt, Mr. Dariani  
7 was tasked with spending \$100,000 in marketing and advertising funds on the ascendant  
8 Facebook. As Mr. Dariani has publicly admitted, “When I saw student networks in the USA, I  
9 wanted to have that in Germany.” *See* attached **Exhibit 5**. While in the United States, upon  
10 looking at Facebook for the first time, Mr. Dariani has admitted to thinking, “Wow, super, it’s a  
11 lot of fun. I want to have that too, there’s no such thing in Germany.” *Id.* According to Mr.  
12 Dariani, “That’s when I thought, ‘That’s good, adopt it, do it.’” *Id.*

13           33.     Upon information and belief, shortly thereafter, Mr. Dariani contacted his friend,  
14 Dennis Bemann, and the two conspired to steal Facebook’s look, feel, features and  
15 functionalities in order to develop their own infringing company and website, StudiVZ Ltd. and  
16 [www.studivz.net](http://www.studivz.net).

17           34.     Mr. Bemann, a young computer programmer from Germany, was also in the  
18 United States working on an internship. Mr. Bemann worked for a San Jose, California-based  
19 technology company named Xilinx, headquartered less than 25 miles from Facebook  
20 headquarters. According to the International Herald Tribune (the international arm of the New  
21 York Times), as an intern for Xilinx, Mr. Bemann “helped to design Internet routing equipment  
22 in Colorado and California.” *See* attached **Exhibit 6**. Upon information and believe, Mr.  
23 Bemann worked for Xilinx in 2005.

24           35.     StudiVZ has since admitted that it was during this time, “in 2005,” that StudiVZ  
25 first learned that Facebook resided in California. *See* attached **Exhibit 7**. Upon information and  
26 belief, it was also during this time that Messrs. Dariani and Bemann began to gain access to  
27 Facebook in order to copy Facebook’s intellectual property.  
28

1           36.     Upon information and belief, at the end of their internships in 2005, Messrs.  
2     Dariani and Bemann traveled back to Germany and continued to access Facebook’s servers in  
3     order to copy Facebook’s look and feel. Upon information and belief, both Mr. Dariani and Mr.  
4     Bemann joined Facebook and agreed to Facebook’s Terms of Use. Within months Messrs.  
5     Dariani and Bemann received initial financing and developed and launched [www.studivz.net](http://www.studivz.net), a  
6     competing social networking site that looked nearly identical to Facebook. *See* attached **Exhibits**  
7     **8 and 9**. Upon information and belief, the StudiVZ site launched on or about October 2005. A  
8     few months later, in May 2006, individual Defendant Michael Brehm joined StudiVZ and later  
9     became its Chief Operating Officer. Mr. Brehm is often credited as being one of StudiVZ’s  
10    “founders” and, upon information and belief, has, knowingly and intentionally contributed, aided  
11    and expanded StudiVZ’s infringement of Facebook’s intellectual property.

12           37.     Also in 2006, an American student named Taylor Mingos joined StudiVZ’s  
13    executive team. According to Mr. Mingos’s biography at his new U.S.-based company’s website,  
14    Mr. Mingos “helped grow StudiVZ.net, an apartment-based start-up in Berlin, into a major  
15    European Internet presence.” *See* attached **Exhibit 10**. Upon information and belief, Mr. Mingos  
16    has since returned to the United States and now resides in North Carolina. *See* attached **Exhibit**  
17    **11**.

18           38.     Mr. Mingos was joined at StudiVZ by another student named Tobias Walter, who  
19    now works as Chief Financial Officer and Chief Operating Officer for Mr. Mingos’s North  
20    Carolina-based company, Shoeboxed. According to Mr. Walter’s biography on the Shoeboxed  
21    website, Mr. Walter was the “VP [Vice President] [for] International Markets for studiVZ.net,  
22    where he led the roll out of the product to eight foreign markets with a multi-million-Euro  
23    budget.” *See* attached **Exhibit 10**. This budget was provided by the Holtzbrinck defendants, who  
24    knowingly financed, aided, and contributed to StudiVZ’s ongoing and expanding infringement of  
25    Facebook’s intellectual property. *See* ¶ 53, *infra*. Upon information and belief, Mr. Walter has  
26    since moved to the United States and now resides in North Carolina. *See* attached **Exhibit 12**.

27           39.     Upon information and belief, after the launch of the initial version of the StudiVZ  
28    website, StudiVZ entered into a contract with the United States-based company Intetics

1 Corporation (“Intetics”). According to its website located at [www.intetics.com/contact.html](http://www.intetics.com/contact.html),  
2 Intetics is headquartered at 809 Ridge Road, Suite 205 in Wilmette, Illinois. See attached **Exhibit**  
3 **13**. Intetics represents itself as being “a global outsourcing company focused on custom  
4 application development, software testing, web system design and offshore staff augmentation  
5 services.” Upon information and belief, U.S.-based Intetics, on its own or through its employees  
6 and agents, continued incorporating stolen Facebook intellectual property into StudiVZ’s website  
7 and service at StudiVZ’s direction. *Id.*. Intetics still lists StudiVZ as one of its “major clients.”  
8 *Id.*

9 40. StudiVZ is an abbreviation of the German term *Studentenverzeichnis* or  
10 *Studienverzeichnis*, which means “students’ directory.” Translated, it bears the same meaning as  
11 the United States idiom “facebook,” which is a colloquial term used to describe a student  
12 directory.

13 41. StudiVZ has stolen not only Facebook’s features, but also its look, its feel, its  
14 design, much of its website functionality, and other proprietary intellectual property such as style  
15 sheets. A comparison between pages of Facebook and StudiVZ show that the websites are  
16 virtually identical. See attached **Exhibits 8 and 9**.

17 42. The similarity between the sites is not coincidental. Mr. Dariani, one of StudiVZ’s  
18 co-founders, has admitted to using the Facebook website to create the StudiVZ website. Upon  
19 information and belief, StudiVZ executives and managers regularly instructed their employees to  
20 join Facebook and create Facebook user accounts for the purpose of regularly copying  
21 Facebook’s features and monitoring Facebook’s developments and innovations. Upon  
22 information and belief, this instruction was sometimes provided as early as the initial interview  
23 with a potential new hire. Upon information and belief, designers and developers at StudiVZ  
24 were instructed, as part of their regular employment tasks, to keep tabs on Facebook and to copy  
25 and implement new features that they felt would “work” on [studivz.net](http://studivz.net).

26 43. Mr. Dariani himself has admitted, “[w]e may have oriented ourselves along the  
27 lines of the Facebook layout.” See *Der Spiegel* (stating “Dariani is not afraid to admit that his site  
28 is based on the American predecessor.”) (Article available online at:

1 (<http://www.spiegel.de/international/0,1518,druck-446353,00.html>).

2 44. But Defendants did much more than simply “orient” the StudiVZ site along  
3 Facebook’s layout. The StudiVZ sites evince the blatant, unabashed and wholesale theft of  
4 Facebook’s user interface and webpage designs.

5 45. As on Facebook, a StudiVZ user first creates a profile. The information requested  
6 from a user when they are creating their profile is substantially identical to that requested by  
7 Facebook. Indeed, the profile creation web pages contain many of the same questions in the same  
8 order that Facebook’s site does, arranged in substantially identical drop-down and side menus. In  
9 both services, once a profile has been completed, a user is taken to their profile page. The  
10 following features bore an unmistakable resemblance to Facebook:

- 11 • A StudiVZ profile page is graphically broken up into a number of distinct frames.  
12 *Compare* attached **Exhibit 8**, a StudiVZ profile page, with attached **Exhibit 9**, a  
13 Facebook profile page.
- 14 • The StudiVZ profile page featured the company logo and/or name in the upper left-  
15 hand corner of the page. *Compare* attached **Exhibit 8** with attached **Exhibit 9**.
- 16 • Below the company logo, the StudiVZ profile page features a “Search” function,  
17 which allows users to search for other users on the site. *Compare* attached **Exhibit 8**  
18 with attached **Exhibit 9**.
- 19 • Below the “Search” bar the StudiVZ profile page has a vertical column of hyperlinks  
20 to website features and applications. *Compare* attached **Exhibit 8** with attached  
21 **Exhibit 9**.
- 22 • The StudiVZ profile page features a frame across the top that includes links to various  
23 pages on the respective site. *Compare* attached **Exhibit 8** with attached **Exhibit 9**.
- 24 • The StudiVZ hyperlinks include links, among others, to a user “Photo” page and a  
25 user “Groups” page. *Compare* attached **Exhibit 8** with attached **Exhibit 9**.
- 26 • Below these links StudiVZ features a small frame in which to include banners or  
27 advertisements. *Compare* attached **Exhibit 8** with attached **Exhibit 9**.
- 28 • To the right of the advertisement frame is a large, square space into which a user may

- 1 insert a picture of themselves. *Compare* attached **Exhibit 8** with attached **Exhibit 9**.
- 2 • Below the personal picture, the StudiVZ site features hyperlinks that allow a user to
- 3 upload and update their photo. *Compare* attached **Exhibit 8** with attached **Exhibit 9**.
- 4 • Below these links is a small frame that lists a user’s friends. *Compare* attached
- 5 **Exhibit 8** with attached **Exhibit 9**.
- 6 • To the right of the personal picture is a frame listing the user’s personal information,
- 7 which on both sites includes the user’s name, date of site membership and other
- 8 contact information. *Compare* attached **Exhibit 8** with attached **Exhibit 9**.
- 9 • Below this area on Facebook is a frame called “The Wall,” which displays public
- 10 messages written by friends meant to be read by all visitors to a user’s profile page.
- 11 *Compare* attached **Exhibit 8** with attached **Exhibit 9**. StudiVZ has an identical frame
- 12 in an identical location whose name translates to “The Board,” which performs an
- 13 identical function to “The Wall” in Facebook. *Compare* attached **Exhibit 8** with
- 14 attached **Exhibit 9**.
- 15 • The StudiVZ “Search Results” page, an example of which is attached hereto as
- 16 **Exhibit 14**, is virtually identical to a similar page on Facebook, attached as **Exhibit**
- 17 **15**.
- 18 • The StudiVZ website has also copied the format as well as certain elements of
- 19 Facebook’s privacy controls, including Facebook’s emphasis on its “core principle”
- 20 that users “should have control over [their] personal information.” *Compare* attached
- 21 **Exhibit 16** with attached **Exhibit 17**.

22 46. In addition to copying the design of profile pages and virtually every other key

23 webpage from Facebook, Defendants have stolen numerous other aspects of the Facebook

24 service. The protocol to communicate with other users is substantially identical in both sites. In

25 both sites, a user may search for and join a group by substantially identical means. Once a user

26 navigates to a Group profile page, the emblematic image of the group is situated in the upper right

27 hand corner of the page, despite the fact that individual user profiles situate the user’s image in

28 the upper left hand corner. *Compare* attached **Exhibit 18**, a StudiVZ “Group Profile” page, with

1 attached **Exhibit 19**, a Facebook “Group Profile” page.

2 47. StudiVZ also appears to have “style sheets” that specifically call out to Facebook  
3 designs, using such file names as “myfb” and “myfacebook.” In addition, both *Der Spiegel* and  
4 the online media have uncovered StudiVZ website error messages that speak to StudiVZ’s  
5 awareness that it was copying Facebook’s intellectual property. A screenshot of these error  
6 messages is attached hereto as **Exhibit 20**. Other online watchdogs have discovered that  
7 StudiVZ’s programmers named one of their programming folders “Fakebook,” an explicit  
8 reference to Facebook and an apt—and incriminating—self-description by StudiVZ of its own  
9 website. See [http://www.spiegel.de/fotostrecke/0,5538,PB64-](http://www.spiegel.de/fotostrecke/0,5538,PB64-SUQ9MTY2ODMmbnI9Ng_3_3,00.html)  
10 [SUQ9MTY2ODMmbnI9Ng\\_3\\_3,00.html](http://www.spiegel.de/fotostrecke/0,5538,PB64-SUQ9MTY2ODMmbnI9Ng_3_3,00.html).

11 48. Any differences between the StudiVZ sites and Facebook are nominal. Most  
12 obviously, Defendants have replaced Facebook’s blue color scheme with a red one. In addition,  
13 the *Der Spiegel* article cited above noted that other than some minor changes between Facebook  
14 and StudiVZ, “the differences are in name only. For example, in Facebook users can ‘poke’ one  
15 another; on StudiVZ, Dariani coined the term ‘gruscheln’<sup>1</sup> – a popular word among users, but the  
16 function is nonetheless identical to the ‘poke.’ Mr. Dariani has stated that he wanted to avoid  
17 ‘mindless Anglicisms,’ and hence the site’s nomenclature is ‘strictly German.’”

18 49. Mr. Dariani’s and Defendants’ eschewing of “mindless Anglicisms” demonstrates  
19 that they worked backwards from the Facebook service, copying everything first, and then doing  
20 away with items that would not resonate with or translate to a German-speaking audience, such as  
21 an American idiomatic term like “poke.”

22 50. Defendants’ theft of Facebook’s intellectual property has not gone unnoticed by its  
23 users or members of the media. Attached as **Exhibits 21** through **24** are printouts of websites that  
24 alternatively refer to StudiVZ as a “Facebook clone,” see **Exhibits 21** and **22**, an example of

25 \_\_\_\_\_  
26 <sup>1</sup> The *Urban Dictionary*, an online dictionary of American and foreign slang founded in 1999,  
27 defines “gruscheln” as, “A German/Austrian made up word that is a mix between the word  
28 *gruessen* (meaning ‘greeting someone’) & *kuscheln* (meaning ‘to hug someone’).” The *Urban Dictionary* notes that “[t]he word was made popular on the popular social networking site StudiVZ which is considered by many as a German Facebook clone.” (emphasis of German words added) (website available at: [www.urbandictionary.com/define.php?term=gruscheln](http://www.urbandictionary.com/define.php?term=gruscheln)).

1 “Copy/Paste Innovation,” see attached **Exhibit 23**, and a “Blatant Facebook Rip-Off,” see  
2 attached **Exhibit 24**.

3 51. One German watchdog website that has closely monitored the StudiVZ service  
4 remarks, “StudiVZ looks remarkably like an American-based social network called Facebook.  
5 The design is very similar, the order of the menu is the same, most of the style sheets have only  
6 been marginally renamed and changed from blue to red, and even the names of some of the  
7 graphic-files are copied.” See <http://www.karsten-wenzlaff.de/?p=115>, also attached herein as  
8 **Exhibit 25**. Another German website has illustrated StudiVZ’s theft with screenshot  
9 comparisons. See [http://www.unfehlbar.net/index.php/studivz-ein-plagiat-als-mochtegern-  
youtube/](http://www.unfehlbar.net/index.php/studivz-ein-plagiat-als-mochtegern-<br/>10 youtube/), also attached herein as **Exhibit 26**.

11 **THE HOLTZBRINCK DEFENDANTS FINANCE, KNOWINGLY CONTRIBUTE, AID,  
12 FURTHER AND PROFIT FROM STUDIVZ’S INFRINGING BEHAVIOR**

13 52. On June 8, 2006, Facebook sent its first cease and desist letter to StudiVZ. The  
14 letter advised StudiVZ that it was infringing on Facebook’s intellectual property and that it should  
15 immediately desist from so doing. Two months later, Defendant Holtzbrinck Ventures became a  
16 15% equity holder of StudiVZ. Upon information and belief, Holtzbrinck Ventures learned of  
17 Facebook’s allegations prior to purchasing its interest in StudiVZ.

18 53. Shortly after this purchase, Defendants began a global expansion of its knockoff  
19 service. They opened dedicated StudiVZ websites in France, Italy, Spain and Poland. See  
20 attached **Exhibit 27**. Notably, upon information and belief, the Holtzbrinck Defendants effected  
21 this global expansion of StudiVZ’s infringing activity through StudiVZ’s Vice President of  
22 International Marketing, Tobias Walter, who now resides and works in North Carolina. See  
23 attached **Exhibit 12**.

24 54. Defendants also opened Facebook knockoffs dedicated to high school students  
25 ([www.schuelervz.net](http://www.schuelervz.net)) and non-students ([www.meinvz.net](http://www.meinvz.net)). Like the original StudiVZ websites,  
26 mein vz.net and schuelervz.net copy Facebook’s non-functional elements such as look and feel,  
27 layout, column size, font, and other design elements. Instead of changing Facebook’s blue color  
28 scheme for a red one, Schuelervz.net uses a pink/fuschia color scheme and Mein vz.net uses an

1 orange one. These websites and their dedicated color palettes further increase the likelihood that  
2 consumers will confuse the StudiVZ websites with Facebook. Consumers are likely to believe  
3 that Facebook has simply chosen to use different colors for different websites dedicated to  
4 individual markets or demographic groups, such as blue for American users, red for European  
5 users, pink for high school users and orange for non-student users. Companies often market their  
6 products in this manner, retaining the same core look and feel throughout their family of products  
7 (fonts, graphical design layout, etc.), but changing the color palette for each product so that  
8 consumers might more readily identify the product best tailored to their needs or desires.

9 55. In addition to copying Facebook's look and feel, the meinvz.net website is now  
10 almost entirely in English, increasing the likelihood of consumer confusion.

11 56. Around the same time or shortly after Defendants, backed with Holtzbrinck  
12 Ventures funds, began its global expansion of Facebook-knockoffs, Facebook sent another cease  
13 and desist letter to StudiVZ. This letter was sent on January 3, 2007. Later, on or about October  
14 2007, Holtzbrinck Ventures' sister organization, Defendant Holtzbrinck Networks ("HNG"),  
15 became an 85% equity holder in StudiVZ. Upon information and belief, due diligence during the  
16 acquisition process revealed to the Holtzbrinck Defendants the two cease and desist letters.  
17 Armed with full knowledge of Facebook's intellectual property claims against StudiVZ, HNG  
18 nevertheless went forward with its purchase. Holtzbrinck Ventures and Holtzbrinck Networks  
19 (herein collectively referred to as the "Holtzbrinck Defendants") now owned 100% of StudiVZ  
20 and controlled and directed its efforts.

21 57. StudiVZ and the Holtzbrinck Defendants are wholly-owned subsidiaries of  
22 Verlagsgruppe Georg von Holtzbrinck ("VGH"). Upon information and belief, VGH's  
23 subsidiaries share management and officers. For instance, both HNG and HVG share overlapping  
24 management. *See* attached **Exhibit 28**. StudiVZ's former Vice President of Sales and current  
25 Chief Executive Officer, Dr. Clemens Riedl, was formerly an agent of VGH. *See* attached  
26 **Exhibit 29**. Further, upon information and belief, the Holtzbrinck Defendants have frequently  
27 exercised their ability to fully control StudiVZ. For instance, upon information and belief, the  
28 Holtzbrinck Defendants have often dictated the content of the StudiVZ websites, requiring



1 changes that would drive consumer traffic to other VGH companies and assets.

2 58. The Holtzbrinck Defendants invested knowing of StudiVZ's infringement, and  
3 after obtaining operational control of the company, directed the company to stay its willfully  
4 infringing course in order to preserve its substantial investment. Defendants continued their  
5 willful infringement knowing that it was harming Facebook in California.

6 59. Defendants' behavior not only constitutes an illegal act in and of itself, but  
7 Defendants' willful disregard for Facebook's property rights has also resulted in significant harm  
8 to Facebook. Defendants' copying of Facebook creates a high likelihood that StudiVZ's websites  
9 are being confused for Facebook's, or that users are being misled into believing there is an  
10 association between StudiVZ and Facebook. This is especially true given the variegated color  
11 scheme of StudiVZ's websites. As with any counterfeit product, StudiVZ's uncontrolled quality  
12 standards for service, features and privacy protection negatively impact the genuine article. For  
13 example, StudiVZ has had numerous well-publicized data and security leaks. Because so many  
14 aspects of StudiVZ have been copied from Facebook, users may believe that Facebook suffers  
15 from the same privacy and security flaws, when that is simply not the case.

16 60. Facebook has also been hampered from entering and competing fairly in the  
17 European market by a copycat website which has misappropriated Facebook's significant  
18 investment.

19 61. On information and belief, Defendants have willfully and maliciously engaged in  
20 unauthorized access to, and unauthorized appropriation of, Facebook's data, information,  
21 computers, and computers systems and networks in an attempt to copy Facebook's website and  
22 services so as to misappropriate Facebook's considerable goodwill and valuable reputation.

23 62. Defendants have benefited financially from this behavior while at the same time  
24 harming Facebook.

25 63. Each of the Defendants had knowledge of the other Defendants' unlawful actions  
26 and authorized and/or directed them to take the actions described in this Complaint on the other  
27 Defendants' behalf.

28

1  
2                    **DEFENDANTS' MULTIPLE CONTACTS WITH THE UNITED STATES**

3            64.     Facebook believes, and therefore alleges, that Defendants maintain substantial and  
4 sustained contacts with both California and the United States as a whole and that they have  
5 purposefully availed themselves of the privilege of conducting activities both in California and  
6 the United States.

7            65.     First, Defendant StudiVZ, with knowledge that Facebook resided in California,  
8 intentionally accessed Facebook's servers for the purpose of stealing Facebook's intellectual  
9 property contained thereon. StudiVZ, first operating on its own and then later with the aid and  
10 encouragement of the Holtzbrinck Defendants, willfully infringed Facebook's intellectual  
11 property rights by developing a global network of confusingly similar websites that misled  
12 consumers as to the association between Facebook and Defendants and misappropriated  
13 Facebook's intellectual property.

14            66.     Second, Defendants' infringing websites have been and are being distributed in  
15 interstate commerce in the United States via the Internet. In fact, Defendants have admitted to  
16 having over 11,000 registered users of its infringing services in California alone. *See* attached  
17 **Exhibit 7**. This number is likely but a fraction of the total users that StudiVZ has across the  
18 country. Each and every one of these users maintains a profile page on one of the StudiVZ  
19 websites. Upon information and belief, like Facebook, in order to create a profile page, in order  
20 to become a StudiVZ user at all, a person must register on the site. The StudiVZ websites do far  
21 more than simply allow passive user registration. The StudiVZ registration pages (on each of its  
22 many knockoff sites) possess dynamically-created interactive prompts that are particularly geared  
23 to guide American and Californian users through their registration process. For instance, when a  
24 would-be StudiVZ user signals that she is from the United States, the StudiVZ registration page  
25 changes to include a drop-down menu that lists a number of the fifty states. *See* attached **Exhibit**  
26 **30**. Upon information and belief, like anything else on a webpage, this drop-down menu was  
27 written-in by a StudiVZ computer programmer in anticipation that American users would want to  
28 register on the site.

1           67.     Once a user selects his or her state of residence or domicile, yet another drop down  
2 menu appears and asks users to select which university with the state the user attends. *See*  
3 attached **Exhibit 31**. Not all colleges or universities within a state are represented in these drop-  
4 down menus. The selection of colleges and universities included within the registration page  
5 appears to be driven by requests from registrants to have their respective schools added to  
6 StudiVZ's site. In other words, upon information and belief, when a student attending an  
7 American university not listed on the registration page wishes to register as a member of one of  
8 the StudiVZ websites, that student is asked to e-mail the university or college's complete name,  
9 its abbreviation, its state, city, postal code and school website to StudiVZ. *See* attached **Exhibit**  
10 **32**. While StudiVZ webmasters are processing the request, would-be users are nevertheless  
11 permitted to register and access the site. A student whose school does not yet appear in the drop-  
12 down menu is encouraged to register as a student from a listed university while the request is  
13 processed. Such students are instructed to change their listing to the correct school at a later date.  
14 Upon information and belief and StudiVZ's own websites, once a university "add request" is  
15 processed, the StudiVZ service adds that university to its permanent drop-down menu, allowing  
16 future registrants from that school to select it.

17           68.     For instance, on the Spanish StudiVZ site's registration page, students from the  
18 University of California at Hayward are expressly provided for. *See* attached **Exhibit 31**. Upon  
19 information and belief, the site received requests from students of UC Hayward to add the  
20 university to its service, which StudiVZ acquiesced to by programming Hayward permanently  
21 into its source code in order to cater and appeal to students from that university.

22           69.     Upon information and belief, StudiVZ has entered into Terms of Use contracts  
23 with each and every one of its over-11,000 California users and countless others throughout the  
24 United States.

25           70.     Upon information and belief based on StudiVZ documents freely available on the  
26 internet, StudiVZ's income model is based not on user fees (registration on StudiVZ, like  
27 Facebook, is free), but from advertisers who pay to have advertisements placed on a webpage.  
28 *See* attached **Exhibit 33**. The more users and "hits" a website has, the more a website is able to

1 charge companies wishing to advertise on the site. Upon information and belief, StudiVZ, when  
2 negotiating with advertisers, includes its California and other American users among its total  
3 number of global users. StudiVZ is thus able to charge more for its advertising space and  
4 effectively generates income from each of its American users.

5 71. According to publicly available press releases, on or about September 2008,  
6 Defendant StudiVZ entered into a contractual agreement with San Jose, California-based  
7 company Panther Express. According to Panther Express, “Panther . . . now successfully serves  
8 100 percent of StudiVZ’s static content – which is projected to grow rapidly as StudiVZ grows in  
9 popularity.” (<http://www.pantherexpress.net/news/25/>). Accordingly, it is likely that some, if not  
10 all, of StudiVZ’s infringing website content is routed through website servers located in  
11 California.

12 72. On or about February 2009, StudiVZ entered into a contractual agreement with  
13 Cupertino, California-based Apple, Inc. (“Apple”). Upon information and belief, StudiVZ  
14 entered into at least two contracts with Apple relating to StudiVZ’s development of an iPhone  
15 cellular phone application meant to deliver StudiVZ’s infringing service to Apple iPhone users.  
16 By and through these agreements, StudiVZ explicitly submitted to California law as well as to the  
17 jurisdiction and venue of this Court. Iterations of StudiVZ’s iPhone application appear to further  
18 StudiVZ’s theft of Facebook’s intellectual property; Facebook earlier released a similar iPhone  
19 application. StudiVZ’s iPhone application is available to all users of Apple’s iTunes software  
20 program. iTunes is a software application used for playing, organizing, purchasing and  
21 downloading, among other things, music, videos and iPhone applications. Upon information and  
22 belief, the iTunes “Store”—where iTunes users go to purchase and download iPhone  
23 applications—is tailored to users from a particular geographic area. For instance, users logging  
24 into the iTunes store from the United States may have access to downloads that are not available  
25 in other countries and vice versa. StudiVZ’s iPhone application is available for download in  
26 California and throughout the United States and is directed at garnering StudiVZ American users.

27 73. Defendants’ business contacts also extend to physical presence in California. For  
28 instance, upon information and belief, Defendant StudiVZ sent representatives on its behalf to the

1 Social Networking Conference held in San Francisco, California from July 26 through July 27,  
2 2007. Upon information and belief, the purpose of the visit was to network with other social  
3 networking companies, to gain exposure for StudiVZ and to garner ideas for future social  
4 networking developments. Also, Defendants have, upon information and belief, sent business  
5 representatives to Silicon Valley in efforts to enter into business partnerships with locally based  
6 companies such as Yahoo! Inc.

7 74. Each of the Defendants had knowledge of the other Defendants' unlawful actions  
8 and authorized and/or directed them to take the actions described in this Complaint on the other  
9 Defendants' behalf.

10 **FIRST CLAIM FOR RELIEF**

11 **VIOLATION OF THE COMPUTER FRAUD AND ABUSE ACT**

12 (18 U.S.C. § 1030)

13 75. Facebook realleges and incorporates herein by reference the allegations in  
14 paragraphs 1-74.

15 76. Defendants knowingly and intentionally accessed Facebook's computers without  
16 authorization or in excess of any authorization. Defendants were not authorized to login into and  
17 use Facebook's site or services for the purpose of copying its web pages, copying its design and  
18 copying its features or copying its trade dress. Defendants were also not authorized to access  
19 Facebook's computer servers beyond the terms set forth in Facebook's Terms of Use, which  
20 Defendants violated by (among other things) using Facebook's servers for commercial purposes  
21 without authorization.

22 77. After gaining unauthorized access to the Facebook servers, Defendants obtained  
23 and used valuable information from Facebook's protected computers in transactions involving an  
24 interstate or foreign communication.

25 78. Defendants knowingly, willfully and with an intent to defraud accessed  
26 Facebook's computers without authorization or in excess of any authorization and obtained  
27 valuable information from Facebook's computers, which, on information and belief, Defendants  
28 used to obtain something of value. Such valuable information includes, but is not limited to,

1 Facebook's webpage design and user interface.

2 79. Defendants' conduct has caused a loss to Facebook during a one-year period far  
3 exceeding the statutory minimum of \$5,000.

4 80. Facebook has suffered damages resulting from Defendants' infringing conduct.  
5 Facebook seeks compensatory and punitive damages under 18 U.S.C. § 1030(g) in an amount to  
6 be proven at trial.

7 81. By reason of Defendants' conduct, Facebook has suffered, is suffering, and will  
8 continue to suffer irreparable harm and, unless Defendants are enjoined, the irreparable harm to  
9 Facebook will continue. Facebook has no adequate remedy at law.

10 **SECOND CLAIM FOR RELIEF**

11 **VIOLATION OF CALIFORNIA PENAL CODE SECTION 502**

12 82. Facebook realleges and incorporates herein by reference the allegations in  
13 paragraphs 1-81 as if set forth fully herein.

14 83. Defendants knowingly accessed and without permission used data, computers,  
15 computer systems, or computer networks in order to wrongfully control or obtain property or data  
16 in violation of California Penal Code §502(c)(1).

17 84. Defendants knowingly accessed and without permission took, copied, or made use  
18 of data from a computer, computer system, or computer network, or took or copied any  
19 supporting documentation, whether existing or residing internal or external to a computer,  
20 computer system, or computer network in violation of California Penal Code §502(c)(2).

21 85. Defendants knowingly and without permission accessed and used the Facebook  
22 services in violation of California Penal Code §502(c)(3).

23 86. Defendants knowingly and without permission accessed, or caused to be accessed,  
24 Facebook's computers, computer system, or computer network in violation of California Penal  
25 Code §502(c)(7).

26 87. Pursuant to California Penal Code §502(e)(1), Facebook seeks compensatory  
27 damages, in an amount to be proven at trial, and injunctive relief for its damages and loss suffered  
28 by Defendants' violations of Facebook's computers and network.



1 **FOURTH CLAIM FOR RELIEF**

2 **BREACH OF CONTRACT**

3 98. Facebook realleges and incorporates herein by reference the allegations in  
4 paragraphs 1-97 as if set forth fully herein.

5 99. By using and/or registering to use the Facebook website and service, Defendants,  
6 by themselves and/or through agents acting within their authorized scope of employment,  
7 consented to the Facebook Terms of Use, thereby entering into a valid contract with Facebook.

8 100. Misappropriating Facebook intellectual property or using Facebook for a  
9 commercial purpose is in breach of the Terms of Use.

10 101. Defendants' breach of the Terms of Use have proximately caused Facebook  
11 damages in an amount to be ascertained at trial.

12 **FIFTH CLAIM FOR RELIEF**

13 **BREACH OF IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING**

14 102. Facebook realleges and incorporates herein by reference the allegations in  
15 paragraphs 1-101 as if set forth fully herein.

16 103. California law implies a covenant of good faith and fair dealing in all contracts  
17 between parties entered into in the State of California.

18 104. By assenting to the Facebook Terms of Use, Defendants entered into a California  
19 contract with Facebook.

20 105. As a result of the actions set forth hereinabove, Defendants unfairly and  
21 improperly interfered with the plaintiff's right to receive the benefits of the Facebook Terms of  
22 Use thereby breaching the covenant of good faith and fair dealing implied in the Terms of Use,  
23 and as a result thereof, Facebook is entitled to damages as prayed.

24 **SIXTH CLAIM FOR RELIEF**

25 **TORTIOUS INTERFERENCE**

26 106. Facebook realleges and incorporates herein by reference the allegations in  
27 paragraphs 1 – 105 as if set forth fully herein.

28 107. California law prohibits an entity from intentionally inducing a party to a contract



1 not to perform that contract.

2 108. Facebook's Terms of Use constitute a valid existing contract between Facebook  
3 and third-party registrants to its website.

4 109. With knowledge of this valid existing contract, Defendants intentionally and  
5 knowingly induced their employees and agents to access Facebook in order to copy Facebook's  
6 intellectual property or otherwise use Facebook for an unauthorized commercial purpose.

7 110. The copying of Facebook's intellectual property or the use of Facebook for an  
8 unauthorized commercial purpose breaches Facebook's Terms of Use.

9 111. Defendants' interference has caused, is causing and will continue to cause a breach  
10 of contract and/or a disruption of the contractual relationship between Facebook and Defendants'  
11 agents and/or employees who have signed up for Facebook and assented to Facebook's Terms of  
12 Use.

13 112. Defendants' interference has resulted in damages to Facebook in an amount and  
14 scope to be determined at trial.

15 **SEVENTH CLAIM FOR RELIEF**

16 **CALIFORNIA COMMON LAW MISAPPROPRIATION**

17 113. Facebook realleges and incorporates herein by reference the allegations in  
18 paragraphs 1 through 112 as if set forth fully herein.

19 114. Facebook has invested substantial time and money in the development of its trade  
20 dress and other intellectual property related to the Facebook.com website.

21 115. Defendants have acquired that trade dress and intellectual property at little or no  
22 cost and have thereby and since caused injury to Facebook.

23 116. Facebook has suffered damages as a result of Defendants' misappropriation and is  
24 entitled to recover damages as prayed and in an amount and scope to be determined at trial.

25 **EIGHTH CLAIM FOR RELIEF**

26 **CIVIL CONSPIRACY**

27 117. Facebook realleges and incorporates herein by reference the allegations in  
28 paragraphs 1 through 116 as if set forth fully herein.



