

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 GREENBERG GLUSKER FIELDS  
 6 CLAMAN & MACHTINGER LLP  
 7 1900 Avenue of the Stars, 21st Floor  
 8 Los Angeles, California 90067-4590  
 9 Telephone: 310.553.3610  
 10 Fax: 310.553.0687

11 Attorneys for Defendants studivz Ltd.

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

GREENBERG GLUSKER FIELDS CLAMAN  
 & MACHTINGER LLP  
 1900 Avenue of the Stars, 21st Floor  
 Los Angeles, California 900674590

15 FACEBOOK, INC.,  
 16 Plaintiff,  
 17 v.  
 18 STUDIVZ LTD., HOLTZBRINCK  
 19 NETWORKS GmbH,  
 20 HOLTZBRINCK VENTURES  
 21 GmbH, and DOES 1-25,  
 22 Defendants.

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

**DECLARATION OF STEPHEN S.  
 SMITH IN OPPOSITION TO  
 FACEBOOK, INC.'S SECOND  
 MOTION TO COMPEL**

Date: June 19, 2009  
 Time: 2:00 p.m.  
 Place: Courtroom 2, 5th Floor  
 Hon. Howard R. Lloyd

[Memoranda of Points and Authorities  
 concurrently filed]

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 (“Networks”) and Holtzbrinck Ventures GmbH (“Ventures”) (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 in support of Defendants’ Opposition to Facebook’s *Second* Motion to Compel.

2. On February 2, 2009, I received copies of the following: (a) Facebook’s Second Set of Requests for Production to Ventures, (b) Facebook’s Second Set of Requests for Production to Networks, (c) Facebook’s Second Set of Requests for Production to StudiVZ, (d) Facebook’s Requests for Admission to Ventures, (e) Facebook’s Requests for Admission to Networks, (f) Facebook’s Requests for Admission to StudiVZ, and (g) Proof of Service (collectively, the “Second Set of Discovery”). The Second Set of Discovery is all dated January 30, 2009. True and correct copies of the Second Set of Discovery are attached hereto as “Exhibit A.”

3. Facebook’s argues that it was waiting for Defendants to “voluntarily” answer Facebook’s Second Set of Discovery before filing its second motion to compel. (Mot. at 2:13-14). However, Defendants had stated their position explicitly in their responses as well as during the March 20, 2009 telephonic meet and confer in which I participated (on behalf of Defendants) with Thomas Gray (on behalf of Facebook). During that meet and confer, I restated the exact same position.

