

Press release 4/09

Cologne Regional Court
Press Office

Cologne, 16 June 2009

**Facebook fails in attempt to obtain injunction against
StudiVZ**

The 33rd civil chamber of the Cologne Regional Court, which is responsible for competition matters, today dismissed Facebook's action against its rival StudiVZ.

Facebook Ltd., which is headquartered in California, had claimed that StudiVZ had unlawfully imitated the look and feel of the Facebook website. It had also claimed that StudiVZ had illegally obtained the secret PHP source code from its rival's websites. This was the basis for its application for an injunction to prohibit further use of the StudiVZ user interfaces for commercial purposes which has now been dismissed by the Cologne Regional Court.

The judges held that despite the obvious overlaps and similarities between the two websites there was no unlawful imitation because there had been no misrepresentation regarding origin. This was because when StudiVZ was launched in Germany in November 2005 its rival Facebook was not yet sufficiently known on the German market. Until September 2006 Facebook, which at that time only existed in English, was only directed at North American students and schoolchildren. There has only been a German version since March 2008.

English Translation for Information Purposes only

The Claimant had failed to provide substantiated evidence that the Defendant had dishonestly obtained knowledge or documents of the Claimant. In this respect the Claimant had merely voiced speculations which were not sufficient to prove that the Defendant had obtained knowledge in a dishonest manner. The judge ruled that these speculations were not sufficiently concrete to warrant the inspection sought by the Claimant. By seeking an inspection the Claimant had wanted to have the PHP source codes of the two parties compared by an expert to prove its allegation that its product had been imitated. The Civil Chamber felt that, ultimately the similarities could also be attributed to the fact that StudiVZ had been aware of the Claimant's websites and had created a program similar to that of the Claimant or had had a similar program created using information which was readily available to anyone on the Internet. It also held that the Defendant could not have infringed the Claimant's general terms and conditions of business because the Defendant had never itself been a contractual partner of the Claimant.

The decision is not final and absolute. The Claimant may file an appeal with the Cologne Higher Regional Court within one month.

The full wording of the decision will be posted in the North Rhine-Westphalia database of court decisions and case law (NRWE) in about one week at www.nrwe.de. Please do not make any queries until then.

Case no. of the Cologne Regional Court: 33 0 374/08

(Dr Dirk Eßer)
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