

# **EXHIBIT A**



Stephen S. Smith  
D: 310.785.6895  
F: 310.201.2350  
SSmith@GreenbergGlusker.com

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Via Email, Fax and U.S. Mail

I. Neel Chatterjee, Esq.  
Orrick Herrington & Sutcliffe LLP  
1000 Marsh Road  
Menlo Park, CA 94025-1015

**Re: Facebook, Inc. v. StudiVZ**

Dear Mr. Chatterjee:

I am writing to express my disappointment with your response to my voicemail message of Wednesday, July 16, 2008.

Your July 9, 2008 cease and desist letter made vague claims of infringement and demanded a response within seven days. My client, StudiVZ, is located in Germany. It needed to find and retain US counsel, and then that counsel needed to spend some time trying to investigate the non-specific allegations raised in your letter.

We were retained on July 15<sup>th</sup>. On the morning of the very next day, I called and left you a voicemail stating that I had just been retained and needed additional time to respond to your letter. I asked for 10-14 days, which seemed reasonable. I also said that I had a couple of questions that I wished to discuss with you. I asked you to call me back.

You did not call me back. Instead, you went to the trouble of drafting an elaborate "Standstill Agreement," which you sent to me in the afternoon of the 16th. We had never discussed any such agreement. You just sent it, along with a cover email stating that you would give me only seven additional days to respond to your letter and only if my client signed the standstill. You ended your email by saying that you would "arrange a call" to discuss my questions only "once the standstill is executed."

Then I read the standstill agreement. You insisted that my client -- who operates entirely outside of the United States -- submit to exclusive jurisdiction and venue in San Jose District Court. You insisted that my client submit to service of process in a manner that would diminish my client's legal rights. You insisted that Facebook have the right to terminate the standstill on much shorter notice than StudiVZ could. The message was clear -- Facebook was forum shopping and had decided to try to force StudiVZ into litigating this dispute in San Jose, even though StudiVZ is not subject to jurisdiction or venue in the United States.

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You also included a provision that I have never seen in a standstill agreement. You insisted that StudiVZ not sell any of its assets or otherwise allow any change in control of its business. I was initially confused by this, until I learned that Facebook has been in negotiations to purchase StudiVZ for many months, and that StudiVZ recently discontinued those discussions. Then it became clear -- Facebook is unhappy with StudiVZ for breaking off the negotiations and cynically wishes to interfere with StudiVZ's ability to court other offers. Perhaps that is why the infringement claims are so vague and empty.

StudiVZ will not sign the standstill agreement. Indeed, given your clearly expressed intent to forum shop, StudiVZ had no choice but to initiate its own action for declaratory relief in Germany (the appropriate forum for this dispute), which it did today. A copy of the papers are attached.

I have used these last two days to investigate the claims raised in your July 9<sup>th</sup> letter. They are frivolous. Although I cannot tell for sure what Facebook is alleging, because you do not actually provide any specifics in your letter, I can see just by comparing the parties' respective websites and user interfaces that there is no infringement of copyright, trademark or anything else. The parties' respective web pages are very different. The few similarities are in areas that are not subject to copyright or trademark protection. The "user interface" is not unique to Facebook, reflects virtually no originality and is not copied. Facebook does not have any registered copyright in anything other than its 2004 home page, which it does not even use anymore.

Accordingly, if Facebook sues StudiVZ in the United States, we will move to dismiss for lack of subject matter jurisdiction, lack of personal jurisdiction and for improper and inconvenient venue and for sanctions under Rule 11.

Notwithstanding the foregoing, I would still welcome an opportunity to speak with you about this matter, if you would just return my call.

Sincerely,



Stephen S. Smith

SSS/nll