

1 STEPHEN S. SMITH (SBN 166539)
 2 SSmith@GreenbergGlusker.com
 3 WILLIAM M. WALKER (SBN 145559)
 4 WWalker@GreenbergGlusker.com
 5 AARON J. MOSS (SBN 190625)
 6 AMoss@GreenbergGlusker.com
 7 GREENBERG GLUSKER FIELDS
 8 CLAMAN & 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 Defendant
 14 Holtzbrinck Networks GmbH, Holtzbrinck
 15 Ventures GmbH and StudiVZ Ltd.

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

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

19 FACEBOOK, INC.,

20 Plaintiff,

21 v.

22 STUDIVZ LTD.,
 23 VERLAGSGRUPPE GEORG VON
 24 HOLTZBRINCK GmbH,
 25 HOLTZBRINCK NETWORKS
 26 GmbH, HOLTZBRINCK
 27 VENTURES GmbH, and DOES 1-
 28 25,

Defendant.

Case No. 5:08-CV-03468 JF

Assigned To: Hon. Jeremy Fogel

**DECLARATION OF MICHAEL
 BREHM IN SUPPORT OF
 DEFENDANTS' MOTIONS TO
 DISMISS FOR LACK OF
 PERSONAL JURISDICTION AND
 FORUM NON CONVENIENS**

[Notice of Motions and Motions and
 (Proposed) Order Filed Concurrently
 Herewith]

Date: February 13, 2009
 Time: 9:00 a.m.
 Dept./Place: Courtroom 3

Complaint Filed: July 18, 2008

DECLARATION OF MICHAEL BREHM

I, MICHAEL BREHM, declare:

1. The facts set forth in this declaration are personally known to me and I have firsthand knowledge thereof. If called as a witness, I could and would testify competently to the facts set forth herein under oath.

2. I am currently and have been since May 2006 a member of the board of directors, and since June 2006 the Chief Operating Officer, of defendant StudiVZ, Ltd. (“StudiVZ”). I make this declaration in support of StudiVZ’s Motion to Dismiss for lack of personal jurisdiction or, in the alternative, for *forum non conveniens*, the complaint filed by plaintiff Facebook, Inc. (“Facebook”).

3. In my capacity as a director and Chief Operating Officer, I have access to StudiVZ’s books and records relating to its business, corporate structure, assets, capitalization and cash flow. Based on the books and records, and my personal knowledge I declare:

4. StudiVZ is a limited liability company incorporated in the United Kingdom. While organized under U.K. law for tax purposes, StudiVZ’s principal place of business is in Germany.

5. StudiVZ operates three groups of “social networking” websites aimed at German-speaking Europe, called “StudiVZ,” “MeinVZ” and “SchuelerVZ.” The specific names of the sites within each group vary slightly from country to country, because of the differences in language from country to country, but are each an interpretation of “Studi,” “Mein” and “Schueler.” The most popular sites are the StudiVZ sites.

6. StudiVZ’s social networking sites are platforms that are made available to subscribers over the Internet to allow those subscribers to create their own unique personal profiles containing information about themselves,

1 photographs of themselves, their families and their friends, and other data. Users
2 then typically share this data with friends and family who are also subscribers to the
3 site, and with others on the site who have similar interests and backgrounds.

4 7. All of StudiVZ’s operations are located in Germany, and its single
5 office and headquarters are in Berlin, Germany.

6 8. The first of StudiVZ’s sites, studivz.net, was formed in Berlin,
7 Germany in 2005 by two young German citizens. Its target group was, and
8 remains, university students in Germany, Austria and Switzerland. StudiVZ.net
9 engaged in direct, person-to-person marketing on German university campuses to
10 advertise itself and to seek subscribers. It has also engaged in marketing activities
11 in Austria, Switzerland, France, Poland, Italy, Spain and Latin America. It has
12 never at any time engaged in such marketing, or indeed any other type of marketing
13 or advertising, in, or that is directed to, the United States in general or to California
14 in particular. StudiVZ also has small French, Italian, Polish and Spanish social
15 networking sites that target university students in French, Italian, Polish and
16 Spanish-speaking countries. StudiVZ’s French, Italian, Polish and Spanish social
17 networking sites target neither the United States in general nor California in
18 particular, and none of these sites markets or advertises in either the United States
19 in general or California in particular. None of the StudiVZ-branded sites is
20 available in English.

21 9. Later, StudiVZ formed in Germany the social networking site
22 “SchuelerVZ.” This site, at schuelervz.net, targets pupils and teenagers before they
23 begin attending a university, and focuses only on Germany, Austria and
24 Switzerland. Scheuler VZ has also never engaged in any marketing or advertising
25 in, or that is directed to, either the United States in general or California in
26 particular. SchuelerVZ is also not available in English.

27 10. In 2008, StudiVZ launched its third social networking site, “MeinVZ,”
28 at meinvz.net. MeinVZ is a social networking site for adults, including those who

1 have graduated from a university. MeinVZ has also never engaged in any
2 marketing or advertising in, or that is directed to, either the United States in general
3 or California in particular. All but one of MeinVZ's sites are in non-English
4 languages. The one English language site was launched in February 2008 and it
5 represents less than 1% of MeinVZ's total user traffic. That site was created in
6 order to provide a platform for two users who speak different, non-English
7 languages to network with each other using a secondary language that is commonly
8 understood between them. Because English is the most commonly understood,
9 non-native language in continental Europe, it serves as a "lingua franca" for people
10 of diverse speech. The English-language site was not created to attract native
11 English speakers, let alone Americans or Californians. The English used on the
12 English-language version of MeinVZ is British English, not American English, and
13 the consultant who was hired to translate MeinVZ's German site into English is a
14 British citizen living in Berlin.

15 11. As to all of the StudiVZ sites, the users initiate the contact with the
16 sites, and the users sign up on the sites. As noted above, the only targeted
17 solicitation undertaken by StudiVZ was on university campuses in Germany,
18 Austria and Switzerland for studivz.net., and the only marketing activities occurred
19 in Germany, Austria, Switzerland, France, Poland, Italy, Spain and Latin America.

20 12. All of StudiVZ's sites are provided free of charge to the users. All of
21 the sites are utilized by the subscribers, in the manner described above, solely as a
22 conduit for the subscribers to interact and to network with each other.

23 13. StudiVZ is not registered or qualified to do business in California. It
24 does not have any officers, directors, employees or independent contractors based
25 in California. It does not have a California agent for service of process.

26 14. While StudiVZ has an office in Germany, as discussed above, it has no
27 offices or facilities in California, nor does it have any telephone or facsimile listings
28 or mailing addresses in California.

1 15. None of StudiVZ’s officers, directors or employees reside or are
2 domiciled in California. No meetings of its management board or equity holders
3 have been held in California.

4 16. StudiVZ does not maintain any books or records in California. It has
5 no bank accounts or other tangible personal or real property in California. It has no
6 sales in California, has had no California income and has not paid any California
7 income taxes.

8 17. There are a total of 11,768,965 current users of all StudiVZ Websites.
9 Only 11,013 of those users, or less than a tenth of one percent (0.094%) have
10 identified themselves as being affiliated with California or a California-located
11 university. Specifically, out of the 5,534,300 registered users of the StudiVZ-
12 branded sites, only 9,144 – 0.1652% – have identified themselves as affiliated with
13 universities located in California. Out of the 4,443,708 registered users of the
14 SchuelerVZ-branded sites, only 122– 0.0027% – identify themselves as being
15 located in California. Out of the 1,790,957 registered users of the MeinVZ-branded
16 sites, only 1,747 – 0.098% – identify themselves as being located in California.

17 18. Almost all of StudiVZ’s employees, officers and directors reside in
18 Germany and speak German (or, in a few cases, another European language other
19 than English) as their native language, and all speak German as their every-day
20 language. StudiVZ does its business almost exclusively in the German language.
21 As a result, almost all of its business documents are located in Germany and written
22 in the German language (and would have to be translated, at huge expense).

23 19. Holtzbrinck Networks GmbH (“Networks”) and Holtzbrinck Ventures
24 GmbH (“Ventures”) own respectively 85% and 15% of StudiVZ. However, neither
25 Ventures nor Networks exercises any type of control over the day-to-day activities
26 of StudiVZ. StudiVZ has its own management team, offices and bank accounts,
27 and is separately (and sufficiently) capitalized from Networks and Ventures. As of
28 its end of the year 2007 audited financial statements, StudiVZ’s total equity was

1
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

valued at €2,515,981. In addition, StudiVZ does not act as a general agent of either Networks or Ventures in any matters.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on this 22 day of October, 2008, at Berlin, Germany.

Michael Brehm