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

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 1900 Avenue of the Stars, 21st Floor  
 Los Angeles, California 90067-4590

18 FACEBOOK, INC.,

19 Plaintiff,

20 v.

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

28 Defendant.

Case No. 5:08-CV-03468 JF

Assigned To: Hon. Jeremy Fogel

**SUPPLEMENTAL MEMORANDUM  
 IN SUPPORT OF DEFENDANTS'  
 MOTIONS TO DISMISS FOR LACK  
 OF PERSONAL JURISDICTION OR,  
 IN THE ALTERNATIVE, FOR  
 FORUM NON CONVENIENS TO  
 INFORM COURT OF NEW  
 GERMAN ACTION**

[Declaration of William M. Walker and  
 Supporting Exhibit Filed Concurrently  
 Herewith]

Date: February 13, 2009

Time: 9:00 a.m.

Dept./Place: Courtroom 3

Complaint Filed: July 18, 2008

1 Defendants StudiVZ Ltd. (“StudiVZ”), Holtzbrinck Networks GmbH  
2 (“Networks”) and Holtzbrinck Ventures GmbH (“Ventures”) (collectively  
3 “Defendants”) respectfully seek permission to file this supplemental memorandum  
4 in support of their Motions to Dismiss for Lack of Personal Jurisdiction or, in the  
5 alternative, for *Forum Non Conveniens* (the “Motions”). (Docket Nos. 41, 42).

6 After Defendants’ Motions were filed in November, plaintiff Facebook, Inc.  
7 (“Facebook”) filed a new lawsuit against StudiVZ in Cologne, Germany.  
8 Facebook’s lawsuit is based upon the identical facts and conduct as Facebook’s  
9 California action against StudiVZ and the other defendants (the “California  
10 Action”). The fact that there are now *two* German actions between the parties on  
11 these same issues that are raised in this California Action weighs heavily in favor of  
12 a *forum non conveniens* ruling in this Court.

13 Defendants seek to bring this information to the Court’s attention now (rather  
14 than in their forthcoming reply memorandum), in order to give Facebook an  
15 opportunity to address these issues in its opposition to the Motions.

16  
17 **I. BACKGROUND**

18 As discussed in the Motions, Facebook, Inc. (“Facebook”) filed the California  
19 Action on the same day that StudiVZ filed its own lawsuit against Facebook in the  
20 *Landgericht Stuttgart* (district court Stuttgart) in Stuttgart, Germany (the “First  
21 German Action”). In the First German Action, StudiVZ seeks a declaratory  
22 judgment that StudiVZ does not infringe or violate any of Facebook’s rights.

23 Defendants brought the Motions because: (1) they lack sufficient contacts  
24 with California for this Court to exercise jurisdiction over them; and (2) Germany is  
25 the proper forum to resolve the parties’ disputes. As discussed in the Motions,

26 (a) there is already a German action between StudiVZ and Facebook;

27 (b) all of Defendants’ alleged actions took place in Germany;

28 ///

1 (c) Facebook alleges that it has suffered harm primarily in Germany and  
2 other parts of Europe;

3 (d) all of the people who could have possibly engaged in the conduct alleged  
4 by Facebook are located in Germany;

5 (e) those witnesses speak German as their native language, and most would  
6 require translators to testify in a United States legal proceeding; and

7 (f) nearly all of the documents related to Facebook's allegations are located  
8 in Germany, and the vast majority of those documents are written in German, thus  
9 requiring huge translation costs to be used in a United States legal proceeding.

10 (See, e.g. Brehm Decl. ¶ 18) (Docket No. 47).

11  
12 **II. FACEBOOK HAS NOW FILED ITS OWN LAWSUIT IN GERMANY.**

13 Since Defendants' Motions were filed last month, Germany's connection to  
14 the parties' dispute has grown significantly.

15 On November 19, 2008, Facebook filed a lengthy response in the First German  
16 Action, presenting all of Facebook's defenses and evidence (the "Response")  
17 (Declaration of Dr. Anton G. Maurer ["Maurer Decl."], ¶ 4(d); Ex. O) (Docket No.  
18 65); (Declaration of William M. Walker ["Walker Decl."], ¶¶ 3-4).

19 On the same day, Facebook filed an eighty-eight page long, single-spaced  
20 Complaint at the "*Landgericht Köln*" (district court Cologne), in Cologne, Germany  
21 against StudiVZ (the "Second German Action") (Exhibit "B1" to Facebook's  
22 Response in the First German Action). (Maurer Decl., ¶ 4(d)) (Docket No. 65). The  
23 Second German Action is based on the identical facts and conduct as the California  
24 Action and seeks affirmative relief against StudiVZ (including monetary damages,  
25 injunctive relief, and an accounting). (Walker Decl., ¶¶ 4-6; Ex. F, pp. 2-3).

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1 **III. WITH THE SECOND GERMAN ACTION, EVEN FACEBOOK**  
2 **ACKNOWLEDGES THAT GERMANY IS THE PROPER FORUM.**

3 Putting aside its lack of merit, Facebook’s dispute against StudiVZ does not  
4 belong in a California court. The fact that Facebook has now filed its own lawsuit  
5 in Germany against StudiVZ lays to rest any question that Germany is the proper  
6 forum for the parties’ disputes.

7 The Second German Action was filed by Facebook following threats to do so  
8 that began more than two and one half years ago.

9 On June 8, 2006, Facebook’s German counsel sent StudiVZ a demand letter  
10 written in German, invoking German law, and threatening a lawsuit in Germany.  
11 (Declaration of Stephen S. Smith [“Smith Decl.”], ¶ 22; Exs. K-L) (Docket Nos. 64,  
12 64-9, 64-10).

13 Thereafter, on January 3, 2007, Facebook sent StudiVZ another demand letter.  
14 It was also drafted by a German law firm, written in German, invoked German law  
15 and threatened to sue in Germany. (Smith Decl., ¶ 23; Exs. M-N) (Docket Nos. 64,  
16 64-11, 64-12).

17 Only *after* StudiVZ filed the First German Action against Facebook did  
18 Facebook follow through on its threat to sue StudiVZ in Germany. Notably,  
19 Facebook filed the Second German Action *after* Defendants filed their Motion to  
20 Dismiss for *Forum non Conveniens* in this Court.

21 Facebook’s filing of the Second German Action particularly impacts factors  
22 six and seven of the Ninth Circuit’s seven factor *forum non conveniens* test. *Core-*  
23 *Vent Corp. v. Nobel Industries AB*, 11 F.3d 1482, 1487-88 (9th Cir. 1993).

24 Factor six considers whether Facebook would be able to obtain effective relief  
25 in another forum. Now that Facebook is the plaintiff in the Second German Action,  
26 in which it seeks several forms of affirmative relief (including but not limited to  
27 monetary and injunctive relief and an accounting), there can be no doubt that  
28 Facebook will be able to achieve effective relief there if its complaint has merit.

1 Factor seven considers the existence of an alternative forum. *Facebook* bears  
2 the burden of proving that an alternative forum is *unavailable*. *Core-Vent*, 11 F.3d  
3 at 1490. Not only is an alternate forum available in Germany (both in Stuttgart and  
4 Cologne), but *Facebook itself* has acknowledged the existence of that forum for  
5 more than two and one half years (beginning with the sending of its first German  
6 demand letter), and has now purposefully availed itself of that alternative forum by  
7 filing a lengthy and comprehensive lawsuit there.

8 Simply stated, the Second German Action solidifies the already extremely  
9 close connection between Germany and the parties. Because the Second German  
10 Action is based on the identical facts and conduct as the California Action, and  
11 because it seeks affirmative relief against StudiVZ (including monetary damages),  
12 there is no rational reason for the California Action to proceed. Therefore, for this  
13 reason, as well as all the reasons previously set forth in the Motions (and those that  
14 may be set forth in any Reply memoranda), Defendants respectfully request that the  
15 Court grant the Motions to Dismiss.

16  
17 DATED: December 18, 2008

GREENBERG GLUSKER FIELDS  
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18  
19  
20 By: /s Stephen S. Smith  
STEPHEN S. SMITH  
21 Attorneys for Defendant STUDIVZ LTD.  
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