

Exhibit 5

Brown, Matthew D.

From: Brown, Matthew D.
Sent: Thursday, August 24, 2017 6:53 PM
To: David Straite
Cc: sgrygiel@mdattorney.com
Subject: RE: Facebook Internet Tracking Litig., 5:12-md-2314-EJD-NC

David,

This request is very late, coming long after the CMC before Judge Davila and just three days before your deadline for filing an amended complaint. Notably, you are requesting this additional Help Center page after we informed you that most of the other Help Center pages you contended were relevant were actually dated after the class period (or on the last day of the class period) and therefore are not relevant. That said, we have conducted an expedited search for Help Center pages containing the language specified in your email and will produce what we located. We are aiming to send them to you this evening via our SFTP site. By producing these documents we do not concede that they are relevant or can be used to support Plaintiffs' amended claims, and we reserve all rights, arguments, and defenses.

Matt

From: David Straite [mailto:dstraite@kaplanfox.com]
Sent: Tuesday, August 22, 2017 11:34 AM
To: Brown, Matthew D. <BROWNMD@cooley.com>
Cc: sgrygiel@mdattorney.com
Subject: RE: Facebook Internet Tracking Litig., 5:12-md-2314-EJD-NC

Matt,

through independent investigation, just today we have discovered another Help Center page (we understand from the end of 2010) with relevant language to the contract claims. To our knowledge, your client has not produced any documents in discovery containing this language. If possible, could you expedite production of historical versions of any Help Center page containing this or materially similar language:

Does Facebook have the ability to see what I'm doing on non-Facebook sites?

Facebook cannot track your actions on external sites unless you decide to connect your Facebook account to that site and/or explicitly decide to publish a story to your Wall. For example, if you are on Digg, and digg an article, or comment on an article, Facebook will only be notified of the actions for which Digg wants to create a story. Facebook will have no access to other actions you have taken or other information involving your Digg account.

To take advantage of the ability to generate stories from another site, you must "connect" your Facebook account to that site, or otherwise be logged into Facebook while you interact with one of these sites. You will always be notified and given the opportunity to opt out of having any particular story published.

David A. Straite
Kaplan Fox & Kilsheimer LLP

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Fax +1.212.687.7714**

From: David Straite
Sent: Monday, August 21, 2017 7:26 PM
To: 'Brown, Matthew D.' <BROWNMD@cooley.com>
Cc: sgrygiel@mdattorney.com
Subject: RE: Facebook Internet Tracking Litig., 5:12-md-2314-EJD-NC

Thanks Matt, we appreciate the reminder regarding the April 2016 supplemental production. As you note, several of the produced pages post-date the class period proposed in the SAC, and (perhaps inartfully), that was the point of our inquiry. We need to confirm whether older historical versions of Help Center pages might exist other than the ones already produced. In particular, if they exist, we need production of any Help Center pages that contain the language from the first sentence of the first paragraph in Exhibit A to my letter of August 14th. Can you confirm whether or not that language (or language materially similar) appeared in the Help Center prior to September 27, 2011?

As for the language in Exhibit D to my letter, we accept your representation that "based on Facebook's investigation to date, no page containing the specified language was ever part of the Help Center, nor was that language contained on any page that linked to the Help Center" and will wait until after the complaint to explore further. Thanks.

**David A. Straite
Kaplan Fox & Kilsheimer LLP
850 Third Avenue
New York, NY 10022
Tel. +1.212.687.1980
Fax +1.212.687.7714**

From: Brown, Matthew D. [<mailto:BROWNMD@cooley.com>]
Sent: Monday, August 21, 2017 2:54 PM
To: David Straite <dstraite@kaplanfox.com>
Cc: Lillian Rodriguez <LRodriguez@kaplanfox.com>; sgrygiel@mdattorney.com
Subject: RE: Facebook Internet Tracking Litig., 5:12-md-2314-EJD-NC

David,

This is in response to your letter of August 14th, attached to the email below.

At the Case Management Conference on July 28th, Plaintiffs requested, and Facebook agreed to produce, historical versions of Help Center pages in Facebook's possession that existed during the class period that Plaintiffs contend they need to prepare their third amended complaint. Upon review of the exhibits attached to your letter, we were surprised to discover that the Help Center pages you are asking for have been in your possession for well over a year. In April 2016, Facebook produced historical versions of a set of Help Center pages, including those you identified in your August 14 letter. For your convenience, we have identified the Bates numbers of pages containing material portions of the text from the exhibits to your letter as they appeared in that production:

Exhibit A: FB_MDL_00064918

Exhibit B: FB_MDL_00064919, FB_MDL_00064920, FB_MDL_00064921

Exhibit C: FB_MDL_00064912, FB_MDL_00064914, FB_MDL_00064915

Note that most of these documents bear dates indicating that they did not appear during the class period. For example, FB_MDL_00064918 (Exhibit A) bears the date 2011-09-27, the day after the class period ended. Similarly, FB_MDL_00064919, FB_MDL_00064920, and FB_MDL_00064921 (Exhibit B) and FB_MDL_00064915 (Exhibit C) bear dates after the end of the class period. Any such Help Center pages that are so dated have no relevance to the two claims remaining in this case (among the other reasons we contend they have no relevance).

With respect to Exhibit D, based on Facebook's investigation to date, no page containing the specified language was ever part of the Help Center, nor was that language contained on any page that linked to the Help Center. Accordingly, it is beyond the scope of the parties' production agreement.

Sincerely,
Matt

Matthew D. Brown

Partner

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From: Lillian Rodriguez [<mailto:LRodriguez@kaplanfox.com>]

Sent: Monday, August 14, 2017 12:40 PM

To: Brown, Matthew D. <BROWNMD@cooley.com>

Cc: David Straite <dstraite@kaplanfox.com>; sgryguel@mdattorney.com

Subject: Facebook Internet Tracking Litig., 5:12-md-2314-EJD-NC

Dear Counsel,

Please see the attached letter from David Straite.

Regards,

Lillian Rodriguez

Paralegal

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