

KING & SPALDING

King & Spalding LLP
333 Twin Dolphin Drive
Suite 400
Redwood Shores, CA 94065
Tel: (650) 590-0700
Fax: (650) 590-1900
www.kslaw.com

Paul J. Andre
Partner
Direct Dial: 650-590-0721
Direct Fax: 650-590-1900
pandre@kslaw.com

November 12, 2009

Magistrate Judge Stark
U.S. District Court
District of Delaware
J. Caleb Boggs Federal Bldg.
844 North King Street
Wilmington, DE 19801-3519

Re: Leader Technologies, Inc. v. Facebook Inc., No. 1:08-cv-00862-JJF

Dear Judge Stark,

It is extremely unfortunate that I am compelled to write this letter to the Court, but given the serious and baseless accusations made by Facebook's counsel in its letter of today, I feel it is imperative that I respond. First and foremost, as an officer of the court and one who takes his ethical obligations very seriously, I have never instructed, implied or suggested that anyone destroy evidence in a litigation. This suggestion in the letter from Facebook's counsel is nothing short of insulting, and truly not deserving the dignity of a response. Nonetheless, I will provide the Court with the relevant information, so that this issue can be dispatched with immediately.

Leader Technologies ("Leader") is a small company that has alleged that its patented technology has been stolen by Facebook, and that Facebook has made hundreds of millions of dollars utilizing Leader's patented technology. When Leader decided to enforce its patent rights against Facebook, it realized that it did not have enough money to engage in such a litigation, and thereafter approached several companies that provide financing for such cases. During the course of this litigation, Facebook requested that Leader produce all documents regarding its patent or Facebook. Leader produced emails and documents relating to its communications with these third party financing companies. Nothing in these communications (i.e., attempting to obtain financing for a case) has any relevance to any issue in this case. Leader, however, wanted to be as responsive as possible to Facebook's overbroad document requests, and as such communications where there were discussions about the patent or Facebook were produced.

Facebook has taken these irrelevant documents and issued several third party subpoenas to individuals and companies identified in the documents. In some cases, these individuals are

Leader's current or former employees or members of Leader's Board of Directors. However, many of the subpoenas were issued to litigation financing companies. With respect to some of these financing companies, Leader entered into non-disclosure and community of interest agreements, so the parties and their counsel could communicate freely. The agreements had a clause in them that all documents exchanged between the parties would be returned to the producing party when the deal and/or negotiations were concluded.

In response to the numerous third party subpoenas, several individuals and/or companies contacted Leader and have requested Leader's counsel to represent them regarding the subpoenas. In such instances, we have prepared objections to the subpoena, collected documents, to the extent the party had documents, and are preparing the documents for production. With respect to Northwater Patent Funding Corp. ("Northwater"), the company that is the subject of Facebook counsel's letter, Leader had executed an agreement with a company with this name based out of Toronto, Canada in April 2008. The subpoena issued by Facebook was directed to a company called Northwater c/o Northwater Capital Management based out of New York, New York. After receiving notice of the subpoena, I called our contact at Northwater in Toronto to inquire if they were affiliated with the New York company, and if so, to determine the identity of their counsel, and left a voicemail message for them.

The reason I wanted to know the identity of Northwater's counsel is because there is a provision in the agreement between the parties that if a subpoena is issued for any documents exchanged between the parties, the disclosing party shall provide the other party with an opportunity to seek a protective order or to take action to protect the confidentiality of the information. On November 11, Northwater's counsel, Dan Segal from Sherman & Sterling, called me about the subpoena. He provided me the following information:

1. Northwater in New York was affiliated with Northwater in Toronto;
2. He just received the subpoena and did not know anything about the matter and had never heard of Leader; and
3. He was not aware of any agreement between Northwater and Leader.

I informed Mr. Segal that there was an agreement¹ between the parties, and that the agreement had provisions about protecting the confidentiality of the parties' proprietary information. Mr. Segal asked me whether I expected there to be many documents. I informed him that I expected there to be few, if any, documents for him to review because the agreement between the parties had a clause that required the return of all documents when the negotiations concluded, and that documents created by the receiving party based on confidential information would be destroyed. I also informed him that his client previously had told Leader that all such

¹ The agreement at issue has not been produced. Wholly apart from its lack of relevance, Facebook served document requests requesting this information on October 21, 2009. Responses to these requests are not due until November 20, 2009 and Facebook requested, for the first time today, the production of the agreement. Thus, the accusation that Leader has somehow failed to produce this document is simply another baseless allegation.

November 12, 2009

Page 3

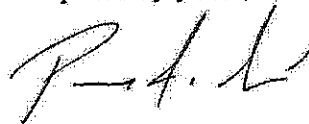
documents had been returned pursuant to the parties' agreement. I also told him that, to the extent Northwater did retain any of Leader's documents, we requested the opportunity to review them before they were produced to Facebook so we could assert any confidentiality concerns and make any privilege objections pursuant to the parties' agreement. At that point, we exchanged contact information and the call ended. Overall, the call was short and very professional, and nearly identical to dozens of similar calls I have had over the years with, or on behalf of, third parties subpoenaed in these types of cases.

Aside from maligning my professional ethics, the most shocking and disappointing aspect of Facebook counsel's letter is the fact that, prior to sending her letter to the Court, Ms. Keefe never sought to find out from me what the facts were, or what actions I had taken regarding Northwater or any other third party. That would have been the professional and respectful manner to handle this situation. Instead, Ms. Keefe sent me a letter today telling me that she intended to inform Your Honor about the issue. Less than two hours later, without giving me the opportunity to respond, Ms. Keefe sent her inflammatory letter to the Court. Her failure to meet and confer prior to making such serious allegations is inexcusable. The only plausible explanation for such conduct is that this represents yet another litigation tactic to stay discovery and prolong this case, illustrated by Facebook's request for an immediate stay of all discovery, coinciding with its pending motion to stay the case.

Facebook's repeated requests for a stay of discovery in this case and attempts to keep this case from trial in June 2010, as currently scheduled, is not unusual for an infringer in a patent infringement case. However, accusing opposing counsel of unethical behavior without even attempting to ascertain the facts to make another request for a stay of discovery is simply unacceptable.

I will be available to discuss this matter with the Court during the scheduled call on November 13 at 9:30 a.m.

Respectfully yours,

A handwritten signature in dark ink, appearing to read 'P. J. Andre', written in a cursive style.

Paul J. Andre

PJA:

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

CERTIFICATE OF SERVICE

I, Philip A. Rovner, hereby certify that on November 13, 2009, the within document was filed with the Clerk of the Court using CM/ECF which will send notification of such filing(s) to the following; that the document was served on the following counsel as indicated; and that the document is available for viewing and downloading from CM/ECF.

BY CM-ECF, E-MAIL AND HAND DELIVERY

Thomas P. Preston, Esq.
Steven L. Caponi, Esq.
Blank Rome LLP
1201 Market Street
Wilmington, DE 19801
Preston-T@blankrome.com
caponi@blankrome.com

I hereby certify that on November 13, 2009 I have sent by E-mail the foregoing document to the following non-registered participants:

Heidi L. Keefe, Esq.
Mark R. Weinstein, Esq.
Jeffrey Norberg, Esq.
Cooley Godward Kronish LLP
Five Palo Alto Square
3000 El Camino Real
Palo Alto, CA 94306-2155
hkeefe@cooley.com
mweinstein@cooley.com
jnorberg@cooley.com

/s/ Philip A. Rovner
Philip A. Rovner (#3215)
Potter Anderson & Corroon LLP
Hercules Plaza
P. O. Box 951
Wilmington, DE 19899
(302) 984-6000
provner@potteranderson.com