

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

LEADER TECHNOLOGIES, INC., a
Delaware corporation,

Plaintiff and Counterdefendant,

v.

FACEBOOK, INC., a Delaware
corporation,

Defendant and Counterclaimant.

Civil Action No. 1:08-cv-00862-JJF

EXHIBITS 1, 3 AND 4 TO

DEFENDANT FACEBOOK, INC.'S
CONFIDENTIAL LETTER TO THE HONORABLE LEONARD P. STARK
PURSUANT TO COURT ORDER OF MARCH 8, 2010

OF COUNSEL:

Heidi L. Keefe (*pro hac vice*)
Mark R. Weinstein (*pro hac vice*)
Melissa H. Keyes (*pro hac vice*)
COOLEY GODWARD KRONISH LLP
5 Palo Alto Square
3000 El Camino Real
Palo Alto, CA 94306-2155

Dated: March 9, 2010

BLANK ROME LLP
Steven L. Caponi (DE Bar #3484)
1201 N. Market Street, Suite 800
Wilmington, DE 19801
302-425-6400
Fax: 302-425-6464

*Attorneys for Defendant and
Counterclaimant Facebook, Inc.*

EXHIBIT 1

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

LEADER TECHNOLOGIES,)
INC.,)
)
Plaintiff,)
) C.A. No. 08-862-JJF-LPS
v.)
)
FACEBOOK, INC., a)
Delaware corporation,)
)
Defendant.)

Wednesday, December 23, 2009
11:00 a.m.
Teleconference

844 King Street
Wilmington, Delaware

BEFORE: THE HONORABLE LEONARD P. STARK
United States District Court Magistrate

APPEARANCES:

POTTER, ANDERSON & CORROON, LLP
BY: PHILIP A. ROVNER, ESQ.

-and-

KING & SPAULDING
BY: PAUL ANDRE, ESQ.

Counsel for Plaintiff

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APPEARANCES CONTINUED:

BLANK ROME, LLP
BY: STEVEN L. CAPONI, ESQ.

-and-

COOLEY, GODWARD & KRONISH, LLP
BY: HEIDI L. KEEFE, ESQ.
BY: JEFFREY NORBERG, ESQ.

Counsel for Defendant

1 Well, I'm prepared to rule on this
2 one. And having weighed the competing arguments,
3 I am persuaded that Facebook is entitled to some
4 relief on this issue, and specifically I am going
5 to order that Leader provide fully functioning
6 copies of the Leader to Leader, and I guess
7 Leader to Leader Enterprise social networking
8 products.

9 I'm looking specifically at
10 Facebook's Request for Production Number 65 and
11 66, which are attached as Exhibit 18 to Docket
12 Entry 182.

13 So with respect to 65 and 66, I'm
14 overruling Leader's objections and I'm granting
15 the motion to compel of Facebook. I do believe
16 that while the burden of proving competition in
17 connection with the request for an injunction and
18 other types of damages or damages relief, while
19 that burden is on Leader, a defendant here,
20 Facebook, has a right to defend itself, not
21 solely by arguing that the plaintiff has failed
22 to meet its burden, but also by, if it can,
23 proactively proving that the two companies, in
24 this case, are not competitors.

1 And I think that Facebook is
2 entitled to access fully functioning access to
3 the product that is the basis for the contention
4 of Leader that the companies are competitors.
5 Facebook's entitled to access to that product to
6 determine if it may have a basis for arguing
7 through the product that the two companies are
8 not competitors.

9 At this point, I'm denying the
10 request for relief under Production Request
11 Number 67, which seeks a copy of the complete
12 source code for Leader to Leader. I do recall
13 fairly well the back and forth over many weeks or
14 months and phone calls that we had which led
15 ultimately to the production of the entire source
16 code of Facebook to Leader.

17 And it may turn out that Facebook
18 will persuade me that they need access to the
19 entirety of Leader's source code. But seeing as
20 Facebook has not yet even had access to a fully
21 functioning version of the product, seeing as I'm
22 sure Leader will view the source code as the most
23 important commercial property, and seeing as I
24 think, I would want a very strong showing before

1 I'm going to provide access to the source code
2 just as I required when Leader was seeking
3 Facebook's source code, I just don't think that
4 showing has or can be made at this point given
5 that Facebook has not even had a moment to access
6 fully functioning access to the product to the
7 Leader product.

8 So that's my ruling on that issue.

9 We should talk about the timing for
10 when Leader can provide the fully functioning
11 product. Mr. Andre, given the holidays, you want
12 to suggest a date by which you could do this?

13 MR. ANDRE: Your Honor, I will
14 endeavor to do all the issues you brought up by
15 January 15th, if that's acceptable.

16 THE COURT: That is acceptable. So
17 you'll do that by January 15th.

18 I believe that addresses all the
19 issues raised in the letters.

20 Is that correct, Ms. Keefe?

21 MS. KEEFE: It does, Your Honor. I
22 had one other question, if you don't mind.

23 THE COURT: Just one second.
24 Mr. Andre, were there any other issues in the

1 letters that you think have not been addressed?

2 MR. ANDRE: No, Your Honor. I think
3 everything has been addressed.

4 THE COURT: Okay. Ms. Keefe.

5 MS. KEEFE: The simple question, I
6 think Your Honor still has two motions pending
7 before Your Honor, and I just wanted to know if
8 we could anticipate a ruling on those or a
9 hearing if you needed one.

10 THE COURT: The answer is, yes, I'm
11 going to rule on those motions right now.

12 MS. KEEFE: Thank you.

13 THE COURT: Okay. So the two
14 pending motions are Facebook's motion to stay
15 pending re-examination and Facebook's motion for
16 leave to amend its responsive pleading to add a
17 counterclaim for false marking. And I am going
18 to give you my rulings on both of those motions
19 right now.

20 First, on the motion to stay pending
21 re-examination, I am denying Facebook's motion to
22 stay. Facebook, as we know, seeks a stay until
23 the conclusion of a pending ex parte and inter
24 parte's re-examinations by the PTO of Leader's

EXHIBIT 2
FILED SEPARATELY UNDER SEAL

EXHIBIT 3



Mark R. Weinstein
(650) 843-5007
mweinstein@cooley.com

VIA EMAIL JHANNAH@KSLAW.COM

January 27, 2010

James Hannah
King & Spalding
333 Twin Dolphin Drive
Suite 400
Redwood Shores, CA 94065

RE: Leader Technologies, Inc. v. Facebook, Inc.

Dear James:

On January 25, 2010, I accessed the Leader2Leader product with the username provided by LTI's January 15, 2010 letter in order to analyze whether or not it practices the '761 patent. As you know, whether the Leader2Leader product practices the patent is highly relevant to both LTI's claims that it is a competitor of Facebook as well as to Facebook's false marking counterclaim.

However, upon viewing the Leader2Leader product, it became immediately apparent that simply having access to the product itself will be insufficient to conduct this analysis. For instance, in order to determine whether Leader2Leader actually "updat[es] the stored metadata" based on a change of a user from a first context to a second context, we would need to be able to see whether the metadata is updated in such an instance. This is impossible to view as a mere user of the Leader2Leader service.

Thus, Facebook would require that all of the source code for Leader2Leader be made available in order to complete a meaningful review. As you are aware, Judge Stark left the issue as to whether LTI would produce this code open in the December 23 Order, pending Facebook's access to the Leader2Leader product.

Please let us know by Friday, January 29, 2010 whether LTI will produce the source code without Facebook needing to seek additional recourse from the Court.

Sincerely,

Cooley Godward Kronish LLP

A handwritten signature in black ink, appearing to read "Mark R. Weinstein", written over a white rectangular background.

Mark R. Weinstein

1160997 v1/SF

EXHIBIT 4

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

James Hannah
Associate
Direct Dial: 650-590-0726
Direct Fax: 650-590-1900
jhannah@kslaw.com

February 1, 2010

VIA E-MAIL

Mark R. Weinstein
Cooley Godward Kronish LLP
(650) 843-5007
mweinstein@cooley.com

Re: Leader Technologies, Inc. v. Facebook, Inc.

Dear Mark,

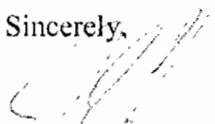
We write in response to your letter dated January 27, 2010, in which you request access to the Leader2Leader product source code. Facebook's only stated reason for requesting Leader's source code is to verify that Facebook and Leader are competitors in the marketplace. *See* December 23, 2009 Hearing Transcript, pgs. 52-62; *See* Facebook's Letter From Caponi to Judge Stark, dated December 21, 2009, pg. 3.

We have already provided you with ample documentation demonstrating competition between Facebook and Leader. For example, we provided you access to the Leader2Leader product, along with thousands of pages of technical and marketing material describing, in detail, the features, benefits, and operation of Leader2Leader. Furthermore, you will have the opportunity to depose Leader's witnesses on this topic. From this material you can easily determine the nature of the competition between Facebook and Leader. There is no conceivable reason why source code of the Leader2Leader product has any bearing on whether Leader and Facebook are competitors. Furthermore, and as stated during the December 23, 2009 hearing with Judge Stark, we have no intention of relying on the Leader2Leader product source code, and therefore it will not be at issue.

Mark Weinstein
February 1, 2010
Page 2

Because of the foregoing reasons we will not at this time grant you access to the Leader2Leader source code because access to the source code serves no purpose other than opening the door to an impermissible attempt at a product-to-product comparison. If you are able to provide reasons why the source code is relevant to this case we will of course take that into consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "James Hannah", written over a light blue horizontal line.

James Hannah

JH:ks