

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

LEADER TECHNOLOGIES, INC., a Delaware corporation,	)	
	)	
Plaintiff-Counterdefendant,	)	Civil Action No. 08-862-LPS
	)	
v.	)	
	)	
FACEBOOK, INC., a Delaware corporation,	)	
	)	
Defendant-Counterclaimant.	)	

**LEADER TECHNOLOGIES, INC.'S REPLY TO THIRD AMENDED  
COUNTERCLAIMS OF DEFENDANT FACEBOOK, INC.**

Plaintiff Leader Technologies, Inc. (“Leader”) responds to the counterclaims set forth by Defendant Facebook, Inc. (“Facebook”) in its Third Amended Answer to Complaint for Patent Infringement; Affirmative Defenses; and Counterclaims (“Third Amended Counterclaims”) as follows:

1. Admitted.
2. Leader admits it is a corporation organized and existing under the laws of the

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State of Delaware having its principal place of business at 737 Enterprise Drive, Suite A, Lewis Center, OH 43035. Except as expressly admitted herein, Leader denies the remaining allegations of paragraph 2 of the Third Amended Counterclaims.

3. Admitted.
4. Admitted.
5. Leader admits that it is the assignee of the complete interest in United States

Patent No. 7,139, 761 (the “‘761 Patent”). Leader contends that Facebook is infringing the ‘761

Patent. Except as expressly admitted herein, Leader denies the remaining allegations of paragraph 5 of the Third Amended Counterclaims.

6. Leader admits that there is an actual controversy between Leader and Facebook regarding Facebook's infringement of the '761 Patent pursuant to 28 U.S.C. § § 2201 and 2202. Except as expressly admitted herein, Leader denies the remaining allegations of paragraph 6 of the Third Amended Counterclaims.

### **COUNT I**

7. Leader incorporates by reference paragraphs 1-6 of this Reply in response to Paragraph 7 of the Third Amended Counterclaims.

8. Leader denies the allegations of Paragraph 8 of the Third Amended Counterclaims.

### **COUNT II**

9. Leader incorporates by reference paragraphs 1-8 of this Reply in response to Paragraph 9 of the Third Amended Counterclaims.

10. Leader denies the allegations of Paragraph 10 of the Third Amended Counterclaims.

### **COUNT III**

11. Leader incorporates by reference paragraphs 1-10 of this Reply in response to Paragraph 11 of the Third Amended Counterclaims.

12. Leader admits that it designs and sells, among other products, a product called "Leader2Leader®" which is powered by "Digital Leaderboard®" ("Leader2Leader"). Except as expressly admitted herein, Leader denies the remaining allegations of paragraph 12 of Facebook's Second Amended Answer to Complaint for Patent Infringement; Affirmative

Defenses and Counterclaims, dated October 21, 2009, filed December 23, 2009 (“Second Amended Counterclaims”). To the extent paragraph 12 of the Third Amended Counterclaims contains additional or different allegations than paragraph 12 of the Second Amended Counterclaims, no response is required pursuant to the Court’s June 24<sup>th</sup> Order.

13. Leader admits that it marked Leader2Leader and related promotional material with the ‘761 Patent number since on or around November 2006. Except as expressly admitted herein, Leader denies the remaining allegations of paragraph 13 of the Second Amended Counterclaims. To the extent paragraph 13 of the Third Amended Counterclaims contains additional or different allegations than paragraph 13 of the Second Amended Counterclaims, no response is required pursuant to the Court’s June 24<sup>th</sup> Order.

14. Leader denies the allegations of Paragraph 14 of the Second Amended Counterclaims. Paragraph 14 of the Second Amended Complaint was removed from the Third Amended Counterclaims.

14. Leader denies the allegations of paragraph 15 of the Second Amended Counterclaims. To the extent paragraph 14 of the Third Amended Counterclaims contains additional or different allegations than paragraph 15 of the Second Amended Counterclaims, no response is required pursuant to the Court’s June 24<sup>th</sup> Order.

15. Leader denies the allegations of paragraph 16 of the Second Amended Counterclaims. To the extent paragraph 15 of the Third Amended Counterclaims contains additional or different allegations than paragraph 16 of the Second Amended Counterclaims, no response is required pursuant to the Court’s June 24<sup>th</sup> Order.

16. Leader denies the allegations of paragraph 17 of the Second Amended Counterclaims. To the extent paragraph 16 of the Third Amended Counterclaims contains

additional or different allegations than paragraph 17 of the Second Amended Counterclaims, no response is required pursuant to the Court's June 24<sup>th</sup> Order.

#### COUNT IV

17. Leader incorporates by reference paragraphs 1-16 of this Reply in response to Paragraph 17 of the Third Amended Counterclaims.

18. Leader admits that Title 37 of the Code of Federal Regulations ("CFR") § 1.56 and the Manual for Patent Examination ("MPEP") § 2000.01, discusses a duty of candor and good faith on each individual associated with the filing and prosecution of a patent application. Except as expressly admitted herein, Leader denies the remaining allegations of paragraph 18 of the Third Amended Counterclaims.

19. Leader admits that U.S. Patent Application No. 10/732,744 (the "'744 Application") was filed on December 10, 2003, and that the '744 application later matured into the '761 Patent. Leader further admits that the '761 Patent claims priority to U.S. Provisional Application No. 60/432,255, filed on December 11, 2002. Except as expressly admitted herein, Leader denies the remaining allegations of paragraph 19 of the Third Amended Counterclaims.

20. Leader admits that in connection with the '744 Application, a Declaration and Power of Attorney were submitted. Except as expressly admitted herein, Leader denies the remaining allegations of paragraph 20 of the Third Amended Counterclaims.

21. Leader denies the allegations of Paragraph 21 of the Third Amended Counterclaims.

22. Leader denies the allegations of Paragraph 22 of the Third Amended Counterclaims.

23. Leader denies the allegations of Paragraph 23 of the Third Amended Counterclaims.

24. Leader denies the allegations of Paragraph 24 of the Third Amended Counterclaims.

25. Leader denies the allegations of Paragraph 25 of the Third Amended Counterclaims.

26. Leader denies the allegations of Paragraph 26 of the Third Amended Counterclaims.

27. Leader denies the allegations of Paragraph 27 of the Third Amended Counterclaims.

28. Leader denies the allegations of Paragraph 28 of the Third Amended Counterclaims.

29. Leader denies the allegations of Paragraph 29 of the Third Amended Counterclaims.

30. Leader denies the allegations of Paragraph 30 of the Third Amended Counterclaims.

31. Leader denies the allegations of Paragraph 31 of the Third Amended Counterclaims.

32. Leader denies the allegations of Paragraph 32 of the Third Amended Counterclaims.

33. Leader denies the allegations of Paragraph 33 of the Third Amended Counterclaims.

34. Leader denies the allegations of Paragraph 34 of the Third Amended Counterclaims.

35. Leader denies the allegations of Paragraph 35 of the Third Amended Counterclaims.

36. Leader denies the allegations of Paragraph 36 of the Third Amended Counterclaims.

37. Leader denies the allegations of Paragraph 37 of the Third Amended Counterclaims.

38. Leader denies the allegations of Paragraph 38 of the Third Amended Counterclaims.

39. Leader denies the allegations of Paragraph 39 of the Third Amended Counterclaims.

40. Leader denies the allegations of Paragraph 40 of the Third Amended Counterclaims.

41. Leader denies the allegations of Paragraph 41 of the Third Amended Counterclaims.

42. Leader denies the allegations of Paragraph 42 of the Third Amended Counterclaims.

43. Leader denies the allegations of Paragraph 43 of the Third Amended Counterclaims.

**AFFIRMATIVE DEFENSES**

44. Facebook fails to state a claim upon which relief can be granted.

45. Leader has not falsely marked any product, for the purpose of deceiving the public, in violation of 35 U.S.C. § 292.

46. Leader has not failed to disclose information known to be material to the patentability of the '761 Patent with the intent to deceive the United States Patent and Trademark Office, in violation of C.F.R. §1.56 (a).

47. The relief requested by Facebook exceeds what is permissible by law.

**PRAYER FOR RELIEF**

WHEREFORE, Leader prays that the Court grant the following relief and judgment:

- A. A declaration that Leader has not falsely marked any product in violation of 35 U.S.C. § 292;
- B. A declaration that Leader has not failed to disclose information known to be material to the patentability of the '761 Patent in violation of C.F.R. §1.56 (a);
- C. A judgment that Facebook infringes the '761 Patent, and that such infringement is willful;
- D. A judgment that the '761 Patent is valid and enforceable;
- E. A denial that Facebook is entitled to any judgment or relief in its favor, including the relief sought in paragraphs A through H of the Prayer for Relief in the Third Amended Counterclaims; and
- F. All relief sought in Leader's Complaint for Patent Infringement against Facebook.

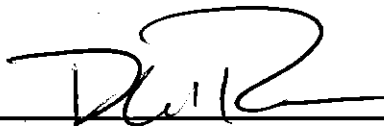
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Dated: July 8, 2010  
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By: \_\_\_\_\_



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**CERTIFICATE OF SERVICE**

I, Philip A. Rovner, hereby certify that on July 8, 2010, 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.

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I hereby certify that on July 8, 2010 I have sent by E-mail the foregoing document to the following non-registered participants:

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