

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

TIMELINES, INC.,

Plaintiff,

v.

FACEBOOK, INC.,

Defendant.

Civil Action No. 11-cv-06867

Judge John W. Darrah

**FACEBOOK, INC.’S OPPOSITION TO PLAINTIFF’S *EX PARTE* APPLICATION FOR
TEMPORARY RESTRAINING ORDER**

Despite having knowledge of the facts giving rise to its claims for nearly a week, plaintiff Timelines, Inc. (“Plaintiff”) seeks an *ex parte* temporary restraining order against defendant Facebook, Inc. (“Facebook”) on fewer than 24 hours notice to Facebook. Facebook opposes Plaintiff’s application for a temporary restraining order, and respectfully requests that the Court deny the application and/or set this matter for a full evidentiary hearing.

Facebook’s preliminary grounds for opposition, based solely on the allegations of Plaintiff’s complaint, are as follows:

1. Plaintiff is unlikely to succeed on the merits because Facebook is using “timeline” generically, and so is Plaintiff. Facebook uses the term “timeline” not as a trademark, but as a generic term. The generally accepted definition of “timeline” is as follows:

A **timeline** is a way of displaying a list of events in chronological order, sometimes described as a project artifact. It is typically a graphic design showing a long bar labeled with dates alongside itself and (usually) events labeled on points where they would have happened.”

See <http://en.wikipedia.org/wiki/Timeline>. See also <http://dictionary.reference.com/browse/time+line> (“a linear representation of important events in the order in which they occurred.”). Facebook uses “timeline” precisely as the term is defined; *i.e.*, to display a list of a

user's events in chronological order, using a long vertical bar labeled with dates and events on each side. *See Exhibit A; Liquid Controls Corp. v. Liquid Control Corp.*, 802 F.2d 934, 936 (7th Cir. 1986) (a generic term is "one that is commonly used as the name of a kind of goods."). Plaintiff likewise uses the term "timeline" generically to describe linear representations of important events. *See Exhibit B.*

Trademark law does not protect generic terms when they are used to designate or describe a product rather than serving as an indicator of source of the product. *Bliss Salon Day Spa v. Bliss World LLC*, 268 F.3d 494, 497 (7th Cir. 2001). Otherwise, the owner of a generic mark would be able to prevent competitors from informing consumers about the basic attributes of the competitor's products. *Balu Plumbing, Inc. v. S.O.S. Fix-It, Inc.*, 781 F.2d 604, 610 (7th Cir. 1986). This is precisely what the Plaintiff is seeking to do in this case. Plaintiff is therefore unlikely to succeed in establishing protectable rights in a trademark, a required element of trademark infringement. *See* 15 U.S.C. § 1125(a).

2. A TRO Will Not Preserve the Status Quo: Facebook's product has already launched and more than a million users have enabled the timeline feature. The launch has already garnered widespread media attention by countless global media outlets and blogs, including CNN, the New York Times, TechCrunch and Yahoo!. An injunction cannot prevent a launch that has already happened.

3. A TRO Will Irreparably Damage Facebook: An injunction would require Facebook to roll back a feature that is already in use by more than a million users, and halt significant work that has been in progress for months. Complying with such an injunction would create an incalculable cost for Facebook, and significantly damage Facebook's users and goodwill.

4. There is No Emergency: Facebook's product launched more than a week ago, on September 22, and Plaintiff admits to having learned about it on September 23. Nonetheless, Plaintiff inexplicably waited at least a week to file its complaint and request a TRO.

5. Plaintiff Failed to Provide Proper Notice: Despite having been aware of Facebook's timeline product for at least a week, Plaintiff first notified Facebook of its intent to seek a TRO in a letter sent fewer than 24 hours before Plaintiff planned to seek extraordinary relief. Having already waited a week, Facebook requested that Plaintiff delay its application by one more business day to allow Facebook's California counsel to travel to and participate in any hearing. Plaintiff refused. Plaintiff also refused to discuss the merits of the application in advance of a TRO hearing, and has not provided Facebook with any written motion for Facebook to oppose.

Facebook respectfully requests that the Application be denied. Should the Court determine Plaintiff's request is entitled to further consideration, Facebook respectfully requests the opportunity to present its position through full briefing and an evidentiary hearing.

Respectfully submitted,

Dated: September 30, 2011

/s/ Tom Monagan

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CERTIFICATE OF SERVICE

I, Thomas M. Monagan, III, an attorney, hereby certify that I served true and correct copies of **FACEBOOK, INC.'S OPPOSITION TO PLAINTIFF'S EX PARTE APPLICATION FOR TEMPORARY RESTRAINING ORDER** upon opposing counsel by hand delivery on this 30th day of September, 2011.

/s/ Tom Monagan