

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

TIMELINES, INC.,)	
)	
Plaintiff/Counter-)	
Defendant,)	Civil Action No.: 11 CV 6867
)	
v.)	HON. JOHN W. DARRAH
)	
FACEBOOK, INC.,)	Jury Trial Demanded
)	
Defendant/Counter-)	
Plaintiff.)	

**TIMELINES, INC.’S LOCAL RULE 56.1(b)(3) RESPONSE TO FACEBOOK, INC.’S
LOCAL RULE 56.1(a)(3) STATEMENT OF MATERIAL FACTS, AND TIMELINES’
ADDITIONAL LOCAL RULE 56.1(b)(3)(C) STATEMENT OF ADDITIONAL
MATERIAL FACTS THAT REQUIRE THE DENIAL OF SUMMARY JUDGMENT**

Pursuant to Local Rule 56.1, Plaintiff and Counter-Defendant Timelines, Inc. (“Timelines”) submits this Response to Facebook’s Statement of Undisputed Material Facts, and Its Additional Statement of Additional Material Facts that Require The Denial of Summary Judgment.

Parties

Paragraph 1 states:

Facebook is a corporation organized and existing under the laws of the State of Delaware, with its principle place of business in Menlo Park, California. (First Am. Compl. (Dkt. No. 27) ¶ 16; Answer (Dkt. No. 33) ¶ 16; Declaration of Brendan J. Hughes in Support of Facebook’s Motion for Summary Judgment (“Hughes Decl.”), ¶ 2, Ex. 1.)

RESPONSE:

Admitted.

Paragraph 2 states:

Plaintiff/Counter-Defendant Timelines, Inc. (“Plaintiff”) is a corporation organized under the laws of the State of Delaware, with its principal place of business in Chicago, Illinois. (First Am. Compl. (Dkt. No. 27) ¶ 15; Answer (Dkt. No. 33) ¶ 15.)

RESPONSE:

Admitted.

Jurisdiction and Venue

Paragraph 3 states:

This Court has jurisdiction over this action pursuant to Section 39 of the Lanham Act, 15 U.S.C. § 1121, and 28 U.S.C. §§ 1331 and 1338, as well as supplemental jurisdiction over state law claims pursuant to 28 U.S.C. § 1367(a). (First Am. Compl. (Dkt. No. 27) ¶ 18; Answer (Dkt. No. 33) ¶ 18.) This Court also has personal jurisdiction over Facebook. (*Id.*)

RESPONSE:

Admitted.

Paragraph 4 states:

Venue is proper in this district under 28 U.S.C. § 1391(b) as the case in controversy arose in this judicial district or a substantial portion of events allegedly giving rise to the claims in this case took place in this judicial district. (First Am. Compl. (Dkt. No. 27) ¶ 17; Answer (Dkt. No. 33) ¶ 17.)

RESPONSE:

Admitted.

I. Plaintiff's Services.

Paragraph 5 states:

Plaintiff offers an online service through its website Timelines.com where, according to its website, users “can record the details of events, connect them in space and through time to other related events, and contribute to a better collective understanding of what occurred at a particular place and time.” (Hughes Decl. ¶ 3, Ex. 2 at FB_TL00000660.)

RESPONSE:

Plaintiff objects to this fact statement on the grounds that it is not properly submitted into evidence because it simply references prints from a webpage and provides an affidavit from Defense counsel that the pages are true and correct prints. However, web pages are not self-authenticating, and Defendant does not cite any admissible evidence authenticating this statement. *See, e.g., U.S. v. Jackson*, 208 F.3d 633, 638 (7th Cir. 2000) (refusing to consider web postings when ruling on motion for summary judgment because not properly authenticated);

Specht v. Google Inc., 758 F.Supp.2d 570, 580 (N.D. Ill. 2010) (refusing to consider screen shots of websites when ruling on motion for summary judgment because not properly authenticated); *Ashworth v. Round Lake Beach Police Dept.*, No. 03 C 7011, 2005 WL 1785314, at *3 (N.D. Ill. July 21, 2005) (refusing to consider printout from website when ruling on motion for summary judgment because such documents are not self-authenticating). Accordingly, it should be disregarded.

Subject to its objections, if this Court is inclined to consider this statement, Timelines admits that this quote only partially explains its services, is taken out of context, and Timelines more fully explains the services it offers in its Statement of Additional Facts (“SAF”) below at ¶¶ 2-8.

Paragraph 6 states:

Timelines.com uses “timelines, maps and lists to enable unique ways for readers to explore and learn about topics...” (Hughes Decl. ¶ 4, Ex. 3 at FB_TL00010742.) An excerpt of a timeline that Plaintiff offered on its timelines.com website as it appeared in September 2011 is below. (Hughes Decl. ¶ 5, Ex. 4.)

The screenshot shows the Timelines.com website interface. At the top, there's a navigation bar with 'timelines' and links for 'POPULAR TIMELINES' and 'TRIVIA QUIZZES'. Below this, the main content area is titled 'Amelia Earhart Timeline'. A featured event for July 1921 is highlighted: 'Amelia Earhart buys her first plane'. The event description reads: 'She loved Herb Zerkow. The first woman candidate to graduate from the Curtiss Technical Institute. He bought her a first plane for the first lessons by attaching a motor and fixed tracks. After only 100 hours of instruction, she decided that she wanted to fly her own plane. She bought a small experimental plane that cost \$7,000 with money borrowed for the motor and fuel, a job of a local telephone company, sorting mail to help pay for it.' Below this, a vertical timeline lists other events: 1897 Jul 24: Amelia Earhart is born; 1920 Dec 28: Amelia Earhart experiences her first flight with Frank Hawks; 1921 Jan 3: Amelia Earhart takes first flying lesson; 1921 Jul: Amelia Earhart buys her first plane; 1922 Oct 27: Amelia Earhart sets altitude record for female pilots; 1928 Jun 17: Amelia Earhart becomes first woman to fly across the Atlantic; 1929 Aug: First Women's Air Derby: Powder Puff Derby. On the right side of the page, there is an advertisement for American Airlines with the text 'TIME FLIES WHEN YOU'RE FLYING FUN. \$49'.

RESPONSE:

Plaintiff objects to this fact statement on the grounds that is not properly submitted into evidence because it simply references prints from a webpage and provides an affidavit from Defense counsel that the pages are true and correct prints. However, web pages are not self-authenticating, and Defendant does not cite any admissible evidence authenticating this statement. See the authority cited in Timelines' response to Paragraph 5. Accordingly, it should be disregarded.

Subject to its objections, if the Court is inclined to consider this statement, Timelines denies that it generally uses timelines (even though the same was referenced in this screen print), denies that this quote explains all of the services it offers, states that it is taken out of context, and Timelines more fully explains the services that it offers in its SAF below, including its occasional references to the term "timeline." See SAF ¶¶ 2-8, 21-22.

Paragraph 7 states:

Plaintiff launched its timelines.com website in April 2009. (Hughes Decl. ¶ 6, Ex. 5 at 45:25-47:11.)

RESPONSE:

Admitted.

Paragraph 8 states:

Plaintiff offers another online service under the name "LifeSnapz" at www.lifesnapz.com, which "is a free, easy and secure way for people to record and organize important events, milestones and memories in their lives. Users of LifeSnapz can contribute text, photos, and video to describe these events, share them with self-designated groups (like family members, colleagues, schoolmates or youth sports teams) and explore these events using dynamic timelines, maps, and lists." (Hughes Decl. ¶ 7, Ex. 6 at FB_TL_00000417.) Plaintiff uses the term "timeline" generically on its LifeSnapz website. (Hughes Decl., ¶ 6, Ex. 5, Hand Depo. at 108:11-24.)

RESPONSE:

Plaintiff objects to this fact statement until the last sentence on the grounds that it is not properly submitted into evidence because it simply references prints from a webpage and

provides an affidavit from Defense counsel that the pages are true and correct prints. However, web pages are not self-authenticating, and Defendant does not cite any admissible evidence authenticating this statement. See the authority cited in response to Paragraph 5. Accordingly, it should be disregarded. Subject to its objections, if the Court were inclined to consider this statement (prior to the last sentence) then Timelines would admit that Facebook has accurately described the LifeSnapz product.

As to the last sentence, Timelines denies the same as Mr. Hand's testimony was that "timeline" is used generically in some instances on LifeSnapz, as opposed to generally. *See* Deposition of Brian Hand ("Hand Dep.") at p. 108. True and correct copies of the pages cited from the Hand Dep. are filed herewith as Exhibit 2.

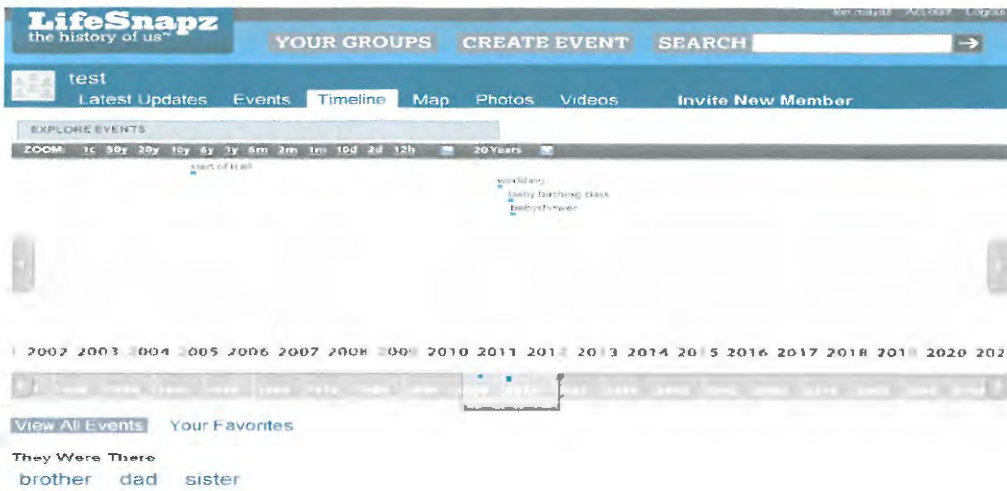
Paragraph 9 states:

Plaintiff's LifeSnapz website describes the "dynamic timelines" available on LifeSnapz as a "timeline feature":

LifeSnapz enables you to explore your events, photos and videos using timelines and maps.

The timeline feature lets you visualize your events across time, and the map feature provides a unique way to visualize your events across a town, state, country or the world. Additionally, timelines and maps can be instantly customized based on who was at an event and how the event was tagged. With this feature, you can easily find the types of events and people you are looking for and create instant timelines and maps based on them.

(*Id.* at FB_TL_00000405.) A depiction of Plaintiff's "timeline" feature as found on the LifeSnapz website is below.



(Hughes Decl. ¶ 8, Ex. 7.)

RESPONSE:

Plaintiff objects to this fact statement on the grounds that it is not properly submitted into evidence because it simply references prints from a webpage and provides an affidavit from Defense counsel that the pages are true and correct prints. However, web pages are not self-authenticating, and Defendant does not cite any admissible evidence authenticating this statement. See the authority cited in response to Paragraph 5. Accordingly, it should be disregarded.

Subject to its objections, if the Court is inclined to consider this statement, Timelines would admit that Facebook has displayed a correct copy of a certain print from the LifeSnapz website, but the same is not a full description of Timelines. Timelines more fully describes all of its services in its SAF ¶¶ 2-8, 23.

Paragraph 10 states:

In April 2010, Plaintiff launched another service called “Timelines SE,” which is “a 100% outsourced, custom branded service, [that] helps news websites organize, present, and monetize past content *** For readers, the service makes past content more readily available and presents it in an intuitive, easy-to-navigate manner using timelines, maps, and lists” (Hughes Decl. ¶ 4, Ex. 3 at FB-TL_00010745.) An example of a Timeline SE outsourced timeline is below.



Brewers Timelines

2011 Season - All Opponents -

Next game Oct 10 2011 vs. St. Louis Cardinals View games

2011 SEASON

Mar 31	Apr 2	Apr 3	Apr 4	Apr 5	Apr 6	Apr 7	Apr 8	Apr 9	Apr 10	Apr 13	Apr 14	Apr 15	Apr 17	Apr 17	Apr 18
L	L	L	L	W	W	W	L	W	W	W	W	L	L	L	W
6-7	2-4	3-12	1-2	1-0	5-4	4-2	4-7	6-0	6-5	6-0	4-1	3-4	4-8	1-5	6-3

2011 SEASON

Oct 9 2011
Braum, Fielder land big blows in comeback victory
 Brewers 9 St. Louis Cardinals 6
 at Miller Park
 GAME COVERAGE ▶

Oct 7 2011
Brewers win thriller, get home-field edge rest of the way
 Brewers 3 Arizona Diamondbacks 2
 at Miller Park
 GAME COVERAGE ▶

More timelines: [Packers](#) | [Bucks](#) | [Badgers](#) | [Badgers](#) | [Golden Eagles](#)

(Hughes Decl. ¶ 9, Ex. 8.) Plaintiff uses the term “timelines” generically to identify its Timelines SE service offerings. (Hughes Decl., ¶ 6, Ex. 5, Hand Depo. at 96:24-97:16.)

RESPONSE:

Plaintiff objects to this fact statement on the grounds that it is not properly submitted into evidence because it simply references prints from a webpage and provides an affidavit from Defense counsel that the pages are true and correct prints. However, web pages are not self-authenticating, and Defendant does not cite any admissible evidence authenticating this statement. See the authority cited in response to Paragraph 5. Accordingly, it should be

disregarded.

Subject to its objections, if the Court is inclined to consider this statement, Timelines would admit that Facebook has displayed a correct copy of a certain print from the Timelines SE offerings, but the same is not a full description of Timelines. Timelines more fully describes all of its services in its SAF ¶¶ 2-8. As to the last sentence, Plaintiff denies that it uses the term “timelines” generically to identify its Timelines SE service offerings, because at the portion of the Hand deposition cited, Mr. Hand testified that the term was used generically in the specific context of a client pitch where Timelines was describing the SE platform. *See* Hand Dep. at p. 97.

Paragraph 11 states:

On its own Facebook page, Plaintiff explains that timelines.com is “for individuals and entities that want to reach and interact with a broad audience about publicly shared events”; LifeSnapz.com is “for families and other trusted groups that want a more controlled, permission-based environment for recording and sharing their events”; and Timelines SE is “for media businesses that want a custom-branded, hosted solution as part of their websites to showcase past content in an innovative, contextually relevant manner.” (Hughes Decl. ¶ 10, Ex. 9.)

RESPONSE:

Plaintiff objects to this fact statement on the grounds that it is not properly submitted into evidence because it simply references prints from a webpage and provides an affidavit from Defense counsel that the pages are true and correct prints. However, web pages are not self-authenticating, and Defendant does not cite any admissible evidence authenticating this statement. See the authority cited in response to Paragraph 5. Accordingly, it should be disregarded.

Subject to its objections, if the Court is inclined to consider this statement, Timelines admits that these descriptions appear on its Facebook page.

II. “Timeline(s)” Is a Common English Word Used to Refer to an Arrangement of Information in Chronological Order.

Paragraph 12 states:

The term “timeline” is defined in numerous dictionaries, such as the American Heritage Dictionary, Merriam Webster’s Collegiate Dictionary, and Wikipedia. (Hughes Decl. ¶¶ 11-18, Exs. 10-15.)

RESPONSE:

Admitted.

Paragraph 13 states:

A recent GOOGLE search for the term “timeline” returned over 454 million hits, including thousands of image results depicting a wide variety of timelines. (Hughes Decl. ¶ 17-18, Exs. 16-17.)

RESPONSE:

Plaintiff objects to this fact statement on the grounds that it is not properly submitted into evidence because it simply references prints from a webpage and provides an affidavit from Defense counsel that the pages are true and correct prints. However, web pages are not self-authenticating, and Defendant does not cite any admissible evidence authenticating this statement. See the authority cited in response to Paragraph 5. Accordingly, it should be disregarded.

Paragraph 14 states:

News media regularly use the term “timeline” for reporting events in chronological order. (Hughes Decl. ¶ 19-21, Exs. 18-20.)

RESPONSE:

Denied. The attached newspaper articles admitted are generic uses of the term “timeline,” but they do not permit any inference that such use is “regular.” Moreover, such third-party uses would only be relevant to the extent they are referring to the same good or product offered by Timelines and Facebook. They are not.

Paragraph 15 states:

The U.S. Patent and Trademark Office (“PTO”) itself uses the term “timeline(s)” generically on its website when referring to its “Trademark Application and Post-Registration Process Timelines.” (Hughes Decl. ¶ 22, Ex. 21.)

RESPONSE:

Admitted.

III. Uses of the Term “Timeline(s) by Plaintiff and its Customers.

Paragraph 16 states:

Prior to initiating this lawsuit, Plaintiff’s Timelines.com website offered a page entitled “Popular Timelines,” which listed over thirteen different categories of “timelines” such as “Timelines of Wars and Conflict,” and “Timelines of Famous People”; Plaintiff also used the term “timeline” in the names of its various arrangements of information in chronological order, such as the “Battle of Bull Run Timeline,” “Al Capone Timeline,” and the “Amelia Earhart Timeline.” (Hughes Decl. ¶¶ 5, 6, 23-25, Exs. 4, 5, Hand Depo. at 52:12-23; Exs. 22-24.) Plaintiff itself admits that “[t]he noun ‘timeline’ refers to a chronological organization of events or other information.” (Hughes Decl., ¶ 6, Ex. 5, Hand Depo. at 40:19-25.)

RESPONSE:

Timelines admits that Timelines.com, for a period sometime after it launched its service, had a web page entitled “Popular Timelines” but states that this was done specifically to increase internet search traffic through higher search results on Google and other search engines. Hand Dep. at pp. 176, 223-24, 226. Meanwhile, Timelines’ URL remained <http://timeliness.com/topics>. *Id.* at p. 51. With respect to the Battle of Bull Run, Al Capone, and Amelia Earhart, Timelines admits that those pages appeared on its website. Timelines also acknowledges that the noun timeline can refer to a graphical chronological organization of events or other information.

Paragraph 17 states:

After initiating this lawsuit, Plaintiff removed the “Popular Timelines” page from its website and replaced it with a page entitled “Popular Topics.” (Hughes Decl. ¶ 26, Ex. 25.) Plaintiff also removed the term “timelines” from the names of the various categories identified on this page so that, for example, “Timelines of Wars and Conflict” became “Wars and Conflict,” and “Timelines of Famous People” became “Famous People.” (*Id.*) Plaintiff also removed the term “Timeline” from the names of its various arrangements of information in chronological order and replaced it with the term “Events” so that, for example, the “Al Capone

Timeline” became “Al Capone Events” and the “Amelia Earhart Timeline” became “Amelia Earhart Events.” (Hughes Decl. ¶¶ 27-29, Exs. 26-28.)

RESPONSE:

Plaintiff objects to this fact statement on the grounds that it is not properly submitted into evidence because it simply references prints from a webpage and provides an affidavit from Defense counsel that the pages are true and correct prints. However, web pages are not self-authenticating, and Defendant does not cite any admissible evidence authenticating this statement. See the authority cited in response to Paragraph 5. Accordingly, it should be disregarded.

Subject to its objections, if the Court is inclined to consider this statement, Timelines admits that it changed the titles of the matters referenced in the statement because it wanted to increase what is known as Search Engine Optimization (“SEO”) value. See SAF ¶ 22. SEO is a way to make a website attractive to individuals who are conducting web searches, such as through popular search engines Google, Yahoo and Bing, by causing the subject site to be crawlable by the search bots and to generate links back to the site. *Id.* Stated otherwise, this was done to increase traffic to Timelines.com from web searches. *Id.* One of the reasons that word had to be used was because, among other reasons, Timelines believed that the popular search engine Google required the words to actually appear on the web pages (and not simply in the metatags). *Id.* Timelines had seen that inbound traffic to its website from web searches was coming after searches for the term “timeline.” *Id.* After the SEO benefit leveled off, Timelines removed the term and noted that the removal did not have a difference in web traffic coming to the website. *Id.*

Paragraph 18 states:

Mr. Brian Hand, Plaintiff’s Co-founder and Chairman, added an event to Plaintiff’s Timelines.com website dated April 20, 2009, entitled: “Google Labs Launches Google News Timeline,” which stated: “Timelines are becoming an increasingly popular user interface.

Today, Google Labs launched a new product called Google News Timeline, which lays out the top stories from Google News in columns for each day....” (Hughes Decl. ¶ 30, Ex. 29.)

RESPONSE:

Plaintiff objects to this fact statement on the ground that it is not properly submitted into evidence because it simply references prints from a webpage and provides an affidavit from Defense counsel that the pages are true and correct prints. However, web pages are not self-authenticating, and Defendant does not cite any admissible evidence authenticating this statement. See the authority cited in response to Paragraph 5. Accordingly, it should be disregarded.

Subject to its objections, if the Court is inclined to consider this statement, Timelines admits that Mr. Hand posted the material described.

Paragraph 19 states:

Plaintiff has operated a blog at <http://blog.timelines.com/> since 2008. Several blog posts include uses of the terms “timeline” and “timelines” to refer to an arrangement of information in chronological order. (Hughes Decl. ¶¶ 31-32, Exs. 30-31.)

RESPONSE:

Plaintiff objects to this fact statement on the grounds that it is not properly submitted into evidence because it simply references prints from a webpage and provides an affidavit from Defense counsel that the pages are true and correct prints. However, web pages are not self-authenticating, and Defendant does not cite any admissible evidence authenticating this statement. See the authority cited in response to Paragraph 5. Accordingly, it should be disregarded.

If the Court is inclined to consider the statement, Timelines admits that several historical blog posts refer to the terms “timeline” and “timelines,” but denies that this is relevant to the motion.

Paragraph 20 states:

Plaintiff also launched and maintained a website dedicated solely to Rod Blagojevich (previously available at www.rodblagojevich.com) that included an arrangement of information related to Rod Blagojevich in chronological order called a “Timeline.” (Hughes Decl. ¶ 33, Ex. 32.)

RESPONSE:

Plaintiff objects to this fact statement on the grounds that it is not properly submitted into evidence because it simply references prints from a webpage and provides an affidavit from Defense counsel that the pages are true and correct prints. However, web pages are not self-authenticating, and Defendant does not cite any admissible evidence authenticating this statement. See the authority cited in response to Paragraph 5. Accordingly, it should be disregarded.

Subject to its objections, if the Court is inclined to consider this statement, Timelines denies that it posted the material described because it merely hosted web pages for a third party under the web pages www.rodblagojevich.com. Hand Decl. ¶ 18. It did not post the material described. *Id.*

Paragraph 21 states:

Customers of Plaintiff’s Timeline SE service used the term “timeline(s)” in the name of the outsourced chronologies of events posted on their websites, such as Boston.com’s “2010 Massachusetts Gubernatorial Election Timeline,” and “Celtics Timeline.” (Hughes Decl. ¶¶ 34-36, Exs. 33-35.)

RESPONSE:

Plaintiff objects to this fact statement on the grounds that it is not properly submitted into evidence because it simply references prints from a webpage and provides an affidavit from Defense counsel that the pages are true and correct prints. However, web pages are not self-authenticating, and Defendant does not cite any admissible evidence authenticating this statement. See the authority cited in response to Paragraph 5. Accordingly, it should be disregarded.

Subject to its objections, if the Court is inclined to consider this statement, Timelines admits that its Timeline SE customers used the term “timeline” in certain outsourced graphical chronologies but denies any further suggestion because the material cited supports no such conclusion.

Paragraph 22 states:

With the exception of this lawsuit, Plaintiff has not made any effort to enforce its purported rights in the alleged mark “Timelines.” (Hughes Decl. ¶ 6, Ex. 5, Hand Depo. at 212:23-213:3.)

RESPONSE:

Denied. The Hand deposition pages cited do not support the statement that Timelines “has not made any effort to enforce its purported rights in the alleged mark ‘Timelines,’” but, instead, the Hand depositions pages cited state “the only action the company has taken to enforce its rights is this lawsuit.” Those are two very different statements.

IV. Uses of the Term “Timeline(s) by Third Party Competitors.

Paragraph 23 states:

Numerous third party competitors of Plaintiff have used the term “timeline(s)” to identify or describe their timeline-related goods and services. In fact, the following entities, among others, all used the term “timeline(s)” before Plaintiff first used “timelines” in 2009: TimelineIndex.com, Famento, Inc. (“Famento”), Kidasa Software (“Kidasa”), Underlying, Inc. (“Underlying”), Twitter, Inc. (“Twitter”), SmartDraw, Tom Snyder Productions, Inc. (“Tom Snyder Productions”), International Reading Association, the Massachusetts Institute of Technology (“MIT”), Timetoast, ZTimeline, Allofme, Timeline Maker, HistoricalTimeline.com, Timelines.info, and Ourtimelines.com. (Hughes Decl. ¶¶ 37, 40-44, 48-52, 54-57, 59-62.)

RESPONSE:

Plaintiff objects to the citations to Hughes Declaration ¶¶ 42, 55-57, 59-62 on the grounds that they are not proper evidence because those citations simply reference prints from web pages and provide an affidavit from Defense counsel that the pages are true and correct prints. However, web pages are not self-authenticating, and Defendant does not cite any admissible evidence authenticating this statement. See the authority cited in response to

Paragraph 5. Accordingly, these should be disregarded.

Plaintiff objects to the citations to Hughes Decl. ¶¶ 37 (affidavit from Jan Battem, purportedly executed on September 28, 2012 but never produced to Timelines) and 43-44 (affidavit from Jillian West, purportedly executed on January 22, 2013 but not previously produced to Timelines) on the grounds that Facebook never disclosed these individuals as persons with knowledge in any initial disclosures or supplemental disclosures. At best, Timelines referenced their companies, TimelineIndex.com and Twitter, (*see* Facebook's Supplemental Disclosures, a true and correct copy of which is filed herewith as Exhibit 92), but that is not sufficient. *See* Fed. R. Civ. P. 37(c)(1) ("If a party fails to provide information or identify a witness as required by Rule 26(a) or (e), the party is not allowed to use that information or witness to supply evidence on a motion"); *Finley v. Marathon Oil Co.*, 75 F.3d 1225, 1231 (7th Cir. 1996); *Kaplan v. City of Chicago*, No. 99 C 1758, 2004 WL 2496462, at *2 (N.D. Ill. Nov. 4, 2004) (granting a motion strike portions of Local Rule 56.1 statements that were from undisclosed witnesses); *Hess v. Reg-Ellen Mach. Tool Corp. Employee Stock Ownership Plan*, No. 02 C 50007, 2003 WL 21209747, at *4 (N.D. Ill. May 22, 2003) (finding that Plaintiff was prejudiced when defendant submitted affidavits of undisclosed witnesses at summary judgment). Although the dates on these affidavits predate the recent filings, they were not even produced earlier.

As to the reference to Hughes Decl. 40-41 (Dipity), Timelines admits that Dipity, SmartDraw, Tom Snyder Productions, International Reading Association and MIT generically used the term "timelines" before 2009. Of course, these uses do not mean that "Timelines" is used generically by either Timelines or Facebook. *See* SAF ¶ 24.

Paragraph 24 states:

"TimelineIndex.com is a website that offers historical information and other content in the form of various timelines, as well as timeline creation services;" these services were first

offered in October 2003. (Hughes Decl. ¶ 37, Ex. 36, Affidavit of Jan Battem ¶¶ 2, 5.) The banner at the top of TimelineIndex.com's home page states prominently: "Timelines, Who, What, Where, When ..." (*Id.* ¶ 3, Ex. A.) TimelineIndex.com also offers a "Timelines Poster" and "Timeline Widgets." (*Id.*) According to Mr. Battem's affidavit, as of September 2012, TimelineIndex.com has had over 5 million visitors (58% from the United States) and over 20 million page views. (*Id.* ¶ 10.)

RESPONSE:

Timelines objects to this fact statement on the grounds that it is based upon an affidavit from a witness that was never disclosed and Timelines has no way to verify any of the matter described. See the authority and arguments made in response to Paragraph 23.

Paragraph 25 states:

Xtimeline is a "timeline tool" offered by Famento, which "offer[s] historical information and other content in the form of various timelines, as well as timeline creation services" through the www.xtimeline.com website; these services were first offered in July 2007. (Hughes Decl. ¶ 39, Ex. 38, Affidavit of Kevin Chen ("Chen Aff.") ¶¶ 3, 6.) On its website, Xtimeline is defined as "a free web-based timeline" and "a place for you to create, share and discuss interesting timelines." (*Id.* ¶ 4, Ex. A; Hughes Decl., ¶ 38, Ex. 37.) The Xtimeline home page includes: (i) a link to "Featured Timelines"; (ii) a search bar that states "search for a timeline"; (iii) a prominent graphic at the top that states: "Create a timeline!"; (iv) a link to "Recent Timeline Lists"; and (v) a link to "Timeline Categories." (Chen Aff. ¶ 4, Ex. A.) According to Mr. Chen's affidavit, as of September 28, 2012, Famento had over 30,000 users on xtimeline.com (approximately 70% located in the United States), over 239,000 monthly unique visitors (approximately 55% located in the United States), and over 747,000 monthly page views. (*Id.* ¶ 10.)

RESPONSE:

Timelines objects to this fact statement on the grounds that it is based upon an affidavit from a witness that was never disclosed, and Timelines has no way to verify any of the matter described. See the authority and arguments made in response to Paragraph 23.

Paragraph 26 states:

Underlying launched a "free digital timeline website" (available at www.dipity.com) under the mark DIPITY around March 2008. (Hughes Decl. ¶¶ 40, 41, Exs. 39, 40, Deposition of Mr. Derek Dukes at 11:25-12:6.) Underlying owns a trademark registration for the mark DIPITY for: "Computer services, namely, providing on-line, non-downloadable software for the creation of timelines based on user-supplied information; Computer services, namely, hosting and maintaining an online website for users to create timelines based on user-supplied information, as well as view the timelines of others." (*Id.*, Pl. Depo. Ex. 2.) Dipity's users can select the "Create a Timeline" tab identified at the top of Dipity's home page to "create, share,

embed and collaborate on interactive, visually engaging timelines.” (Hughes Decl. ¶ 40, Ex. 39.)

RESPONSE:

Admitted.

Paragraph 27 states:

Twitter, a real-time information network that connects over 200 million users using small bursts of information called “Tweets,” has been using the term “timeline” since 2006 to describe a collected stream of Tweets listed in real-time chronological order. Twitter uses the term “timeline” because it believes it is the generic term for such temporal lists. (Hughes Decl. ¶¶ 43, 44, Exs. 42, 43.)

RESPONSE:

Timelines objects to this fact statement on the grounds that it is based upon an affidavit from a witness that was never disclosed, and Timelines has no way to verify any of the matter described. See the authority and arguments made in response to Paragraph 23.

Paragraph 28 states:

Webalon Ltd. (“Webalon”) began offering timeline creation software under the brand TIKI-TOKI (available at www.tiki-toki.com) in March 2011. (Hughes Decl. ¶ 45, Ex. 44, Affidavit of Alex Kearns ¶¶ 1-3.) Tiki-Toki’s home page offers an example of a timeline and states: “Create beautiful timelines!”; “Tiki-Toki is the best and easiest way to create beautiful interactive timelines that you can share on the web”; and “You’ll be creating timelines in minutes.” (*Id.* at ¶ 4, Ex. A.) As of August 31, 2012, Tiki-Toki had more than 60,000 users of its timeline software. (*Id.* at ¶ 9.)

RESPONSE:

Timelines objects to this statement on the grounds that it is based upon an affidavit from a witness that was never disclosed, and Timelines has no way to verify any of the matter described. See the authority and arguments made in response to Paragraph 23.

Paragraph 29 states:

Kidasa has operated the website www.timelinesoftware.com, which provides general information about timelines and has been used to promote its timeline creation software products since 2002. (Hughes Decl. ¶ 42, Ex. 41.) The term “Timelines” is featured prominently at the top of home page, as shown below:



Kidasa’s website also provides the commonly accepted meaning of a timeline: “Generally, a timeline shows a sequence of events or projects over a period of time” (*Id.*) (see screenshot above).

RESPONSE:

Plaintiff objects to this fact statement on the grounds that it is not properly submitted into evidence because it simply references prints from a webpage and provides an affidavit from Defense counsel that the pages are true and correct prints. However, web pages are not self-authenticating, and Defendant does not cite any admissible evidence authenticating this statement. See the authority cited in response to Paragraph 5. Accordingly, it should be disregarded.

Subject to its objections, if the Court is inclined to consider this fact statement, Timelines admits that the Kidasa website is partially described as counsel set forth.

Paragraph 30 states:

Tom Snyder Productions has offered the Timeliner product since 1987, which is an “educational software that’s delivered on a CD that allows teachers or students in their class to type in dates and facts and the computer will create a scaled timeline that you could print out” and uses the term “timeline” to describe the Timeliner product “because the program creates timelines, so it would be natural to use the word ‘timeline’ [to] describe what Timeliner does.” (Hughes Decl. ¶ 51, Ex. 50, Deposition of Mr. Richard Abrams at 14:15-13; 37:2-38:23.)

RESPONSE:

Admitted.

Paragraph 31 states:

International Reading Association has offered a “web-based Timeline Tool” since approximately 2003 and identifies the tool as the “Timeline Tool” because “[i]t creates a timeline.” (Hughes Decl. ¶ 53, Ex. 51, Deposition of Ms. Bridget Hilferty at 17:10-19.)

RESPONSE:

Admitted.

Paragraph 32 states:

SmartDraw has offered timeline creation software since as early as 1996 and has used the term “timeline” in describing its software because it is “descriptive of the feature.” (Hughes Decl. ¶ 49, Ex. 48, Deposition of Mr. Anthony Patterson at 26:6-15.) *See also* (Hughes Decl. ¶ 48, Ex. 47.)

RESPONSE:

Admitted.

Paragraph 33 states:

Mnemograph LLC (“Mnemograph”) has offered “free web-based timeline software” since February 2008 and has used the term “timeline” to refer to its web-based software because “[t]he word timeline is probably just the most accurate word that people in the general public would have in their vocabulary to understand what it is that we have as a product. It’s a common word that’s used to refer to a visual display of historical information on a horizontal axis.” (Hughes Decl., ¶ 47, Ex. 46.)

RESPONSE:

Admitted.

Paragraph 34 states:

MIT developed a timeline software program in 2006, available at <http://www.simile-widgets.org/timeline/>. (Hughes Decl. ¶¶ 53-54, Exs. 52, 53.) “The Timeline project was a JavaScript software library that aimed to make it easy, at least easier, for individuals to create timeline visualizations of structured data that they owned.” (Hughes Decl. ¶ 54, Ex. 53, Deposition of Dr. David Karger, MIT designee, at 16:5-11.) “Timeline” is used to describe the software “because it’s displaying a timeline.” (*Id.* at 54:22-25.) If MIT was prevented from using the term “timeline” it would not be able to properly convey the purpose of the software, at least “not without a lot of roundabout circumlocutions.” (*Id.* at 55:15-20.)

RESPONSE:

Admitted.

Paragraph 35 states:

The founders of TimelinesIndex.com, Famento, and Webalon have each provided a sworn statement in the form of an affidavit stating that the term “timeline” identifies their goods and services because their goods and services enable users to view and create timelines, and that

they use the term “timeline(s)” to identify their goods and services because it is the generic name for their goods and services. (Hughes Decl. ¶¶ 37, 39, 45, Exs. 36, 38, 44.)

RESPONSE:

Timelines objects to this fact statement on that grounds that it is based upon affidavits from witnesses that were never disclosed, and Timelines has no way to verify any of the matter described. See the authority and arguments made in response to Paragraph 23.

Paragraph 36 states:

Witnesses on behalf of TimelineIndex, Famento, Webalon, Mnemograph, International Reading Association, and MIT have declared under penalty of perjury that their companies would be at a competitive disadvantage if they were not allowed to use the term “timeline” to identify or describe their timeline goods and/or services. (Hughes Decl. ¶¶ 37, 39, 45, 47, 52, 54, Exs. 36, 38, 44, 46, 51, 53.)

RESPONSE:

Timelines objects to this fact statement as it regards TimelineIndex, Famento and Webalon on the grounds that it is based upon affidavits from witnesses that were never disclosed, and Timelines has no way to verify any of the matter described. See the authority and arguments made in response to Paragraph 23.

As to Mnemograph, International Reading Association and MIT, Timelines admits those statements were made but denies that they are competitors of Timelines and thus would be at a competitive disadvantage.

Paragraph 37 states:

Witnesses on behalf of TimelineIndex, Famento, Underlying, Webalon, Tom Snyder Productions, International Reading Association, SmartDraw, Mnemograph, and MIT have declared under penalty of perjury that they are not aware of any instances of confusion arising from their use of the term “timeline(s)” in connection with their timeline goods and services, and that neither Plaintiff nor any third party has ever objected to their use of the term “timeline(s).” (Hughes Decl. ¶¶ 37, 39, 41, 45, 51, 52, 49, 47, 54, Exs. 36, 38, 40, 44, 50, 51, 48, 46, 53.)

RESPONSE:

Timelines objects to this fact statement as it regards TimelineIndex, Famento and

Webalon because it is based upon affidavits from witnesses that were never disclosed, and Timelines has no way to verify any of the matter described. See the authority and arguments made in response to Paragraph 23.

As to Underlying, Tom Snyder Productions, International Reading Association, SmartDraw, Mnemograph and MIT, Timelines admits that the witnesses for those companies were not aware of any confusion and that they were not aware of any third-party objections, and that Timeline has not objected to their use of the term “timeline(s).”

V. Consumer Survey Evidence Shows that the Term “Timelines” is a Common Name.

Paragraph 38 states:

Dr. Deborah Jay conducted a *Teflon* model survey to determine the primary significance of the terms “timeline” and “timelines” among individuals age 14 and older who had accessed or were likely to access a social networking website or a website where a user could record events and contribute descriptions, photos, videos and links to related events. (Hughes Decl. ¶ 63, Ex. 62, p. 7.) Only respondents who demonstrated an understanding of the difference between a brand name and a common name were administered the substantive portion of the survey questionnaire. (*Id.*, p. 11.)

RESPONSE:

Timelines admits that Dr. Jay purported to perform the survey described in this paragraph, but Timelines denies that her results are valid. *See* Timelines’ Response to Paragraph 39.

Paragraph 39 states:

68% of respondents in Dr. Jay’s survey expressed a belief that the term “timeline” was generic (not a brand) when asked whether “timeline” was a common name or brand name when used in connection with a website or website feature; 69% of respondents expressed a belief that the term “timelines” was generic when asked the same question regarding “timelines.” (*Id.*, pp. 17-25.) 24% of the respondents believed the terms “timeline” and “timelines” were brand names. (*Id.*)

RESPONSE:

Denied because Dr. Jay’s survey was improperly done. Timelines had its expert Dr. Eli Seggev review and critique Dr. Jay’s expert report, and he concluded that the survey’s results

were invalid for a number of reasons. *See* Timelines’ Rebuttal Report of Dr. Jay from Dr. Seggev (“Seggev Report”), a true and correct copy of which is filed herewith as Exhibit 93. As set forth therein, Dr. Seggev determined that Dr. Jay’s survey contained two irresolvable biases—methodology biases and analysis biases—that render the survey’s results invalid. *Id.* at ¶¶ 3, 5, 7, 11, 14, 15, 19. The methodology biases included marketplace context bias, auditory bias, and questionnaire bias. *Id.* Dr. Seggev concluded that, under the circumstances of this case, a phone survey was the wrong methodology. *Id.* at ¶¶ 5-10; *see also* Deposition of Dr. Seggev (“Seggev Dep.”) at pp. 218, 222-23. True and correct copies of the pages from the Seggev deposition cited herein are attached hereto as Exhibit 94.). Dr. Seggev further concluded that Jay’s survey failed to properly randomize the questions presented to respondents and failed to take into account the “Product Life Cycle” concept. *See* Seggev Report at ¶¶ 11-18; *see also* Seggev Dep. at pp. 224-25.

VI. The U.S. Patent & Trademark Office Refused to Register Plaintiff’s Application for “Timelines” on the Ground that the Term is Merely Descriptive.

Paragraph 40 states:

On September 26, 2011, shortly after filing this lawsuit, Plaintiff filed an application with the PTO to register the alleged mark “Timelines” in connection with a description of services based, in part, on services identified in Facebook’s own trademark registrations. (Hughes Decl. ¶¶ 6, 64, Exs. 5, 63, Hand Depo. at 198:7-200:22.)

RESPONSE:

Admitted.

Paragraph 41 states:

The PTO refused to register Plaintiff’s alleged mark in connection with the identified services on the ground that the term was merely descriptive, citing in support of its refusal many of the third parties mentioned above. (Hughes Decl. ¶ 64, Ex. 63 at FB_TL_00002591-2594.)

RESPONSE:

Timelines admits that the PTO refused to register the referenced mark because of

descriptiveness (not genericness), but denies the vague reference to “many of the third parties mentioned above” because there is no way to accurately respond to that fact statement. Answering further, the PTO has granted Timelines’ other three registrations, making clear that it does not believe the term is generic or descriptive for Timelines’ listed goods and services. *See* SAF ¶ 9.

Paragraph 42 states:

The PTO Examining Attorney noted that “[i]n this case, the wording ‘timelines’ as applied to the applicant’s web-based software services describes a feature, characteristic and function of those services.” (*Id.* at FB_TL_00002591.)

RESPONSE:

Timelines admits that the PTO refused to register the referenced mark because of descriptiveness (not genericness). Answering further, the PTO has granted Timelines’ other three registrations, which are presumptively valid, making clear that the PTO does not believe the term is generic or descriptive for Timelines’ listed goods and services. *See* SAF ¶ 9.

Paragraph 43 states:

Plaintiff did not respond to the PTO’s refusal and as a result, the PTO ultimately deemed the application to be abandoned. (*Id.* at FB_TL_00002642.)

RESPONSE:

Admitted.

VII. There Is No Evidence Demonstrating that Plaintiff’s Alleged Mark Has Acquired Secondary Meaning.

Paragraph 44 states:

Plaintiff has not produced consumer survey evidence or direct consumer testimony relevant to establishing secondary meaning of the term “timelines.” (Hughes Decl. ¶ 65.)

RESPONSE:

Plaintiff objects that this fact statement is not relevant because Plaintiff has no obligation to conduct a survey of any kind and it is unnecessary for Plaintiff to conduct a survey when, as

here, three applications were granted and the marks are *per se* neither generic nor descriptive, in which case there is no need to show secondary meaning, or if descriptive, the USPTO has already decided that secondary meaning exists.

Paragraph 45 states:

Timelines has spent a *de minimus* amount of money, if any, on advertising its services provided through timelines.com. (Hughes Decl. ¶ 6, Ex. 5, Hand Depo. at 177:5-21; 180:4-181:7; 182:12-25; Hughes Decl. ¶ 73, Ex. 71, Armour Depo. at 89:23-90:17.)

RESPONSE:

Denied. Although anything less than millions of dollars spent is *de minimus* to Facebook, Timelines has spent from \$100,000 to \$300,000 on advertising its services. Hand Dep. pp. 184. As a result of Timelines' advertising, Timelines.com has received 3 to 4 million visitors. Hand Dep. at p. 186. Timelines' future advertising budget depends on whether Facebook continues to use Timelines' federally registered trademark TIMELINES because "it's kind of hard to spend money on advertising when someone else is using your trademark and your brand." Hand Dep. at p. 185.

Paragraph 46 states:

Plaintiff's total sales during the past 3 years are approximately [REDACTED] (Hughes Decl. ¶ 66, Ex. 64.)

RESPONSE:

Admitted.

Paragraph 47 states:

Timelines.com has 1,209 active users. (Hughes Decl. ¶ 67, Ex. 65.)

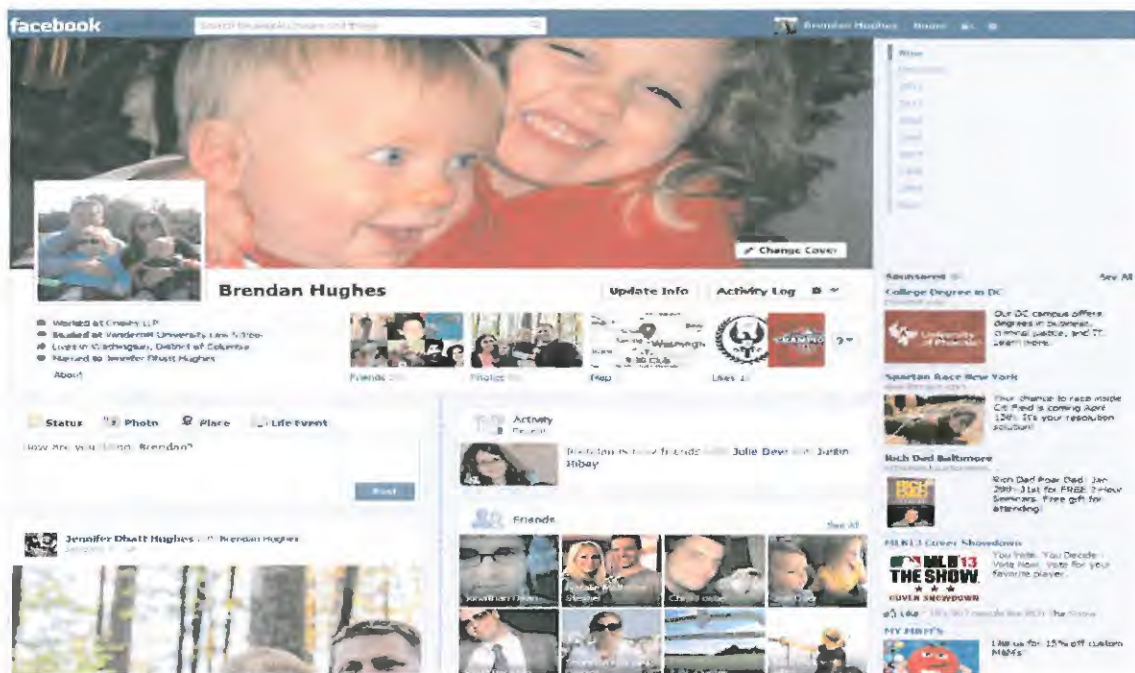
RESPONSE:

Denied. The material cited identifies registered users, not active users.

VIII. The "Timeline" Feature on Facebook.

Paragraph 48 states:

Facebook’s “timeline” feature “changes the default profile from a list of your most recent updates to a complete summary of your entire life since birth. . . . The new Facebook profile is divided into two main columns, [typically] with a line down the middle representing the passage of time,” as well as a navigational tool on the top right corner of the user interface allowing users to easily access content posted in a particular month and year. (Hughes Decl. ¶ 68, Ex. 66.) Below is an excerpt of the redesigned profile as a timeline.



(Hughes Decl. ¶ 69, Ex. 67.)

RESPONSE:

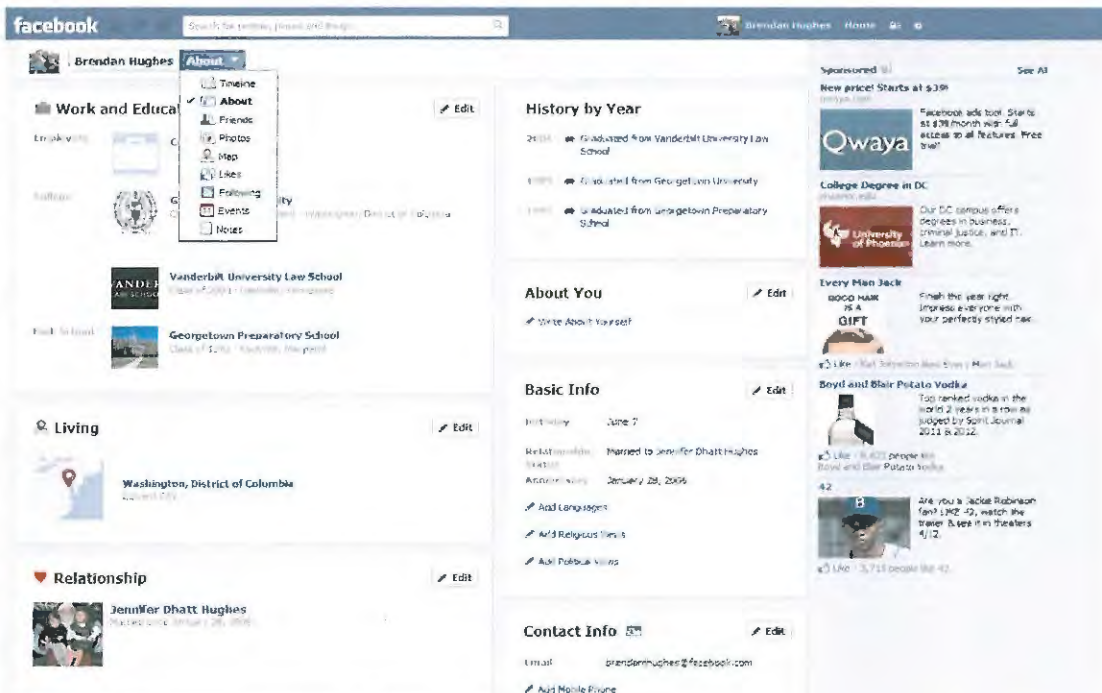
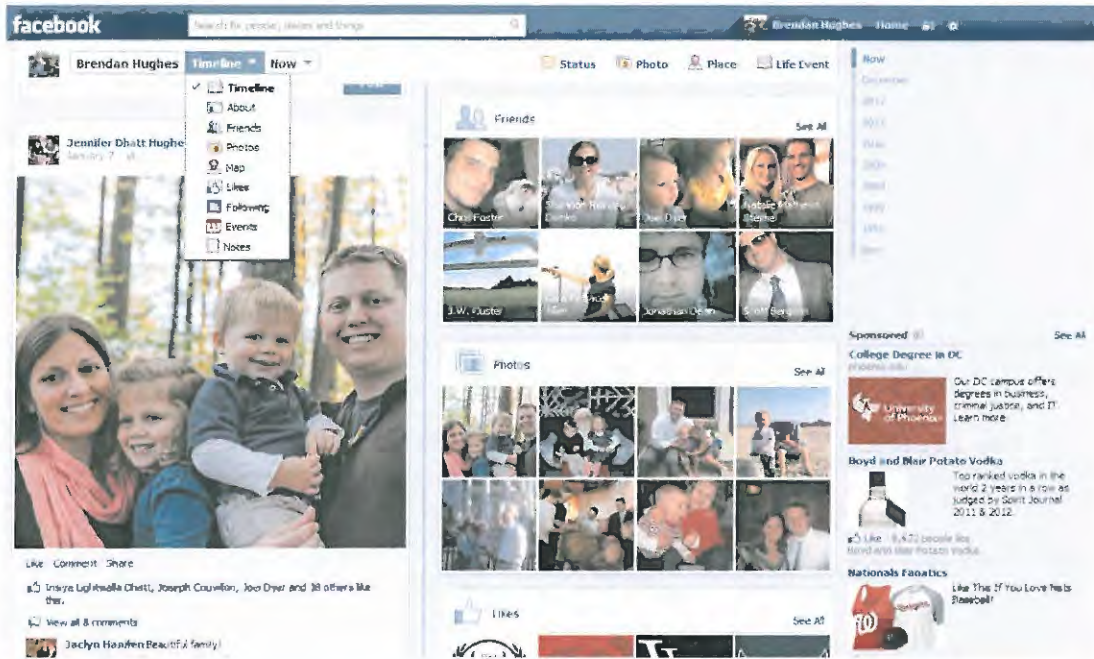
Denied. Plaintiff objects to this fact statement on the grounds that it is not properly submitted into evidence because it simply references prints from a webpage and provides an affidavit from Defense counsel that the pages are true and correct prints. However, web pages are not self-authenticating and Defendant does not cite any admissible evidence authenticating this statement. See the authority cited in response to Paragraph 5. Accordingly, it should be disregarded.

Subject to its objections, if the Court is inclined to consider the statement, Timelines denies it because the statement is a gross mischaracterization of the “timeline” feature right down to the lower-case description of “timeline” in light of the overwhelming evidence that Facebook

treats “Timeline” as a trademark. See SAF ¶¶ 25-51.

Paragraph 49 states:

While logged into Facebook, a registered user can navigate through Facebook’s different features by accessing a drop down menu. Set forth below are depictions of such a drop down menu:



(Hughes Decl. ¶¶ 69-70, Exs. 67-68.)

RESPONSE:

Plaintiff objects to this fact statement on the grounds that it is not properly submitted into evidence because it simply references prints from a webpage and provides an affidavit from Defense counsel that the pages are true and correct prints. However, web pages are not self-authenticating, and Defendant does not cite any admissible evidence authenticating this statement. See the authority cited in response to Paragraph 5. Accordingly, it should be disregarded.

Subject to its objections, if the Court is inclined to consider the statement, then Plaintiff admits it.

Paragraph 50 states:

In addition to the “timeline” feature, the drop down menu often includes features such as “Map,” “Friends,” “Photos,” and “Events.” The term “Map” describes a feature that displays the geographic location of events and experiences; the term “Friends” describes a feature that lists a user’s friends and connections on Facebook; the term “Photos” describes a feature that displays photographs; and the term “Events” describes a feature that identifies and provides information regarding specific events. (Hughes Decl. ¶¶ 69-70, Exs. 67-68.)

RESPONSE:

Plaintiff objects to this fact statement on the grounds that it is not properly submitted into evidence because it simply references prints from a webpage and provides an affidavit from Defense counsel that the pages are true and correct prints. However, web pages are not self-authenticating, and Defendant does not cite any admissible evidence authenticating this statement. See the authority cited in response to Paragraph 5. Accordingly, it should be disregarded.

Subject to its objections, if the Court were inclined to consider the statement, then as to the reference to the “timeline” feature, the statement is a gross mischaracterization of the “timeline” feature right down to the lower-case description of “timeline” in light of the

overwhelming evidence that Facebook treats “Timeline” as a trademark. *See* SAF ¶¶ 25-51. Timelines admits that the other terms describe certain parts of Facebook to which a user can navigate (but whether those are features or otherwise is not something supported by any evidence cited to support the fact statement).

Paragraph 51 states:

Facebook selected the term “timeline” to identify the redesign of the profile page because the redesign depicted a user’s content as a timeline. Thus, the term “timeline” [REDACTED] (Hughes Decl. ¶ 71, Ex. 69.)

RESPONSE:

Denied. Timelines denies this fact statement because the statement is a gross mischaracterization of the “timeline” feature right down to the lower-case description of “timeline” in light of the overwhelming evidence that Facebook treats “Timeline” as a trademark. *See* SAF ¶¶ 25-51.

Paragraph 52 states:

Facebook does not use any trademark symbols in connection with its use of the term “timeline.” (Hughes Decl. ¶ 72, Ex. 70.)

RESPONSE:

Denied. Timelines denies this fact statement because the statement is a gross mischaracterization of the “timeline” feature right down to the lower-case description of “timeline” in light of the overwhelming evidence that Facebook treats “Timeline” as a trademark. *See* SAF ¶¶ 25-51.

Paragraph 53 states:

Facebook also uses the term “timeline” in textual sentences, such as the following: “Your Stories: Share and highlight your most memorable posts, photos and life events on your timeline.”; “Your Cover: . . . It’s the first thing people see when they visit your timeline.”; “You choose what’s featured on your timeline.” (Hughes Decl. ¶ 72, Ex. 70.)

RESPONSE:

Plaintiff objects to this fact statement on the grounds that it is not properly submitted into evidence because it simply references prints from a webpage and provides an affidavit from Defense counsel that the pages are true and correct prints. However, web pages are not self-authenticating, and Defendant does not cite any admissible evidence authenticating this statement. See the authority cited in response to Paragraph 5. Accordingly, it should be disregarded.

If the Court is inclined to consider the statement, Timelines admits that Facebook uses the term “timeline” in the textual sentences noted but further notes that the “Introducing Timeline” web page from which Facebook lifts these sentences contains many references to capital “T” Timeline as a product, including “Introducing Timeline” and “More About Timeline,” and “Get Timeline.” See *Introducing Timeline*, FACEBOOK.COM, <https://www.facebook.com/about/timeline> (last visited June 28, 2012), a true and correct copy of which is attached hereto as Exhibit 15; see also Deposition of Samuel Lessin at pp. 51-53 (admitting this is a true and correct document), a true and correct copy of which is attached hereto as Exhibit 5.

**TIMELINES, INC.'S LOCAL RULE 56.1(b)(3)(C) STATEMENT OF ADDITIONAL
MATERIAL FACTS THAT REQUIRE THE DENIAL OF
FACEBOOK, INC.'S MOTION FOR SUMMARY JUDGMENT**

Timelines, Inc.

1. Timelines, Inc. (“Timelines”) is a small, Chicago company that was founded in January 2007. *See* Declaration of Brian Hand (“Hand Decl.”) ¶ 2, a true and correct copy of which is filed herewith as Exhibit 1; Deposition of Brian Hand (“Hand Dep.”) at pp. 25-31. True and correct copies of the Hand Deposition are filed herewith as Exhibit 2. It operated with five employees, all of whom were let go so that the company could better afford this litigation. Hand Dep. at pp. 30-31.

2. Timelines offers a wide variety of online services, including two websites, which are Timelines.com and LifeSnapz.com, an application services provider called “Timelines SE,” and two applications, one called “Photogram” and the other called “Disaster of the Day.” *Id.* at 133.

3. Timelines.com allows users to record and share events, and contribute descriptions, photos, videos, geographic locations and links (collectively for ease of reference “Content”) related to events. Hand Decl. ¶ 5. Anyone can gain access and be able to post Content to Timelines.com simply by creating an account at no charge. *Id.*

4. Thus, by way of illustration, on Timelines.com, a user can record a personal or historic event that he or she wants to share with the world, ranging from a daughter’s one year birthday party or a family wedding to an obscure basketball game or a much more public event like the Inauguration of President Obama. *Id.* ¶ 6. In connection with any such posted event, any user who accesses the website can add additional or new Content for that event. *Id.* For example, USER A, a student, accesses Timelines.com and posts information about the American Civil War. USER B, a professor with no relation to USER A, may access the website and post

additional Content about one or more of the battles of the Civil War. *Id.* USER B may also post additional information about the Civil War, perhaps about the existing technology of the day. *Id.* Other Timelines.com users can contribute additional content related to the events, including descriptions, photos, videos, geographic locations and links. *See* Deposition of Bob Armour (“Armour Dep.”) at pp. 26-27, 68-69, 75-77. True and correct copies of the pages from the Armour Deposition are filed herewith as Exhibit 3. The concept around Timelines.com was to let the people of the world record the history of the world, however they define that history. *Id.* at p. 89.

5. Timelines also owns and operates LifeSnapz.com, which is aimed specifically at families to allow them to share and record events with designated people that they wanted to share those events with. *Id.* at p. 45.

6. Timelines also owns and operates Timelines SE, an application service provider (“ASP”). Hand Dep. at p. 133; Hand Decl. ¶ 7. Before its customers cancelled or failed to renew these services, Timelines organized certain newspapers’ content regarding, for example, sports information. *Id.*

7. Timelines also owns and operates Photogram, an application that allows people to share photos quickly and easily on their phones to a designated group of people. Armour Dep. at p. 39; Hand Dep. at p. 133-34.

8. Timelines also owns and operates Disaster of the Day, an application that showcased on a daily basis 700-plus disasters that happened over the course of history. Hand Dep. at pp. 134-36.

Timelines, Inc.’s Federally Registered Trademarks

9. Timelines is the owner of Federal Trademark Registration Nos. 3,684,074 for “Timelines,” 3,764,134 for “Timelines.com,” and 3,784,720 for its “Timelines” design mark.

See Facebook’s Answer to Timelines’ First Amended Complaint ¶ 5 (admitting that Timelines owns these three marks); Hand Decl. ¶ 3. True and correct copies of the three registrations from the United States Patent and Trademark Office (“USPTO”) are attached hereto as Group Exhibit 4.

10. Timelines uses the TIMELINES Marks in connection with its goods and services described herein, including without limitation “[p]roviding a web site that gives users the ability to create customized web pages featuring user-defined information about historical, current and upcoming events” and “managing web sites of others in the fields of historical, current and upcoming events.” *See* Ex. 4.

11. Timelines filed its first application for the mark “Timelines” on May 23, 2008, its first use was September 15, 2008, its first use in commerce was April 20, 2009, and its subsequent registration for “TIMELINES” issued on September 15, 2009. *See* Ex. 4.

12. Timelines filed for the Timelines.com mark on May 23, 2008, its first use was September 15, 2008, its first use in commerce was April 20, 2009, and the registration date was March 23, 2010. *See* Ex. 4.

13. Timelines filed for the “Timelines” design mark on October 5, 2009, its first use was April 20, 2009, its first use in commerce was April 20, 2009, and the registration date was May 4, 2010. *See* Ex. 4.

14. Timelines has continuously and consistently used the TIMELINES Marks on the services enumerated in the foregoing registrations since on or about September 15, 2008 to promote and endorse its business. Hand Decl. ¶ 11. Cumulatively, 3-4 million people have visited the website. Hand Dep. at p. 186.

15. During 2011 and 2012, the Timelines.com website has averaged approximately 94,000 visitors per month. Hand Decl. ¶ 12. Timelines believed that Timelines.com could

become a repository of information that happened all over the world, and that it could earn revenue by selling advertising on the site. Hand Dep. at pp. 141-42

16. Timelines has actively promoted Timelines.com and its goods and services using the TIMELINES Marks. Such promotion has included the use of social media, such as Twitter and Facebook, through posting events of the day, and Timelines frequently reaches out to bloggers and educators to promote its products. Hand Dep. at pp. 167, 175-76; Hand Decl. ¶ 13.

17. Timelines maintains a Facebook page at www.facebook.com/timelines, because Facebook is the world's largest social media company. Hand Dep. at pp. 214-15.

18. Timelines has been nominated or recognized for numerous awards and accomplishments, including by way of example, an Open Web Award nomination, a Mashable.com recommendation for web-savvy families, recognition on Television Channel G4's "Attack of the Show" program, a named finalist for the Illinois Technology Association's CityLights Award in the Newcomer category, and as a finalist for the 2010 Chicago Innovation Awards. Hand Decl. ¶ 14.

19. Timelines has invested several million dollars into its business. Hand Dep. at p. 32; Hand Decl. ¶ 15.

20. In addition to having a federal registration on the TIMELINES Marks and the strong nature of the TIMELINES Marks due to their suggestive characteristics, the time and effort that Timelines has put into developing and marketing the TIMELINES Marks has made it so that the TIMELINES Marks have secondary meaning and the public associates the TIMELINES Marks as identifiers for Timelines' goods and services. Hand Decl. ¶ 17; Hand Dep. at p. 185.

21. Timelines' name, Timelines, was never about having a company where a person could go to create or see a "timeline." Hand Dep. at pp. 37-38, 46, 60. The company is called

Timelines and has a site called Timelines.com with no timelines on it, because there are not graphical displays of chronological information. *Id.* at pp. 46, 53. For Timelines, a “timeline” is a graphical presentation of things that happen over time with a horizontal or vertical line, with appendages coming off of the line indicating different points in time and information about something ascribed to that point in time. *Id.* ¶¶ 37-38. Timelines does not do this. *Id.* ¶¶ 46.

22. After being in business for a period of time, Timelines added the phrase “Popular Timelines” to its webpage in order to increase what is known as Search Engine Optimization (“SEO”) value. *Id.* at pp. 46-48, 59. This was done to increase traffic to the Timelines.com website from web searches. *Id.* at 60. One of the reasons that word had to be used was because, among other reasons, Timelines believed that the popular search engine Google required the words to actually appear on the web pages (and not in the metatags). *Id.* at p. 61. Timelines had seen that inbound traffic to its website from web searches was coming after searches for the term “timeline.” *Id.* at p. 48. After the SEO benefit leveled off, Timelines removed the term and noted that the removal did not have a difference in web traffic coming to the website. *Id.* at pp. 223-24. SEO is a way to make a website attractive to individuals who are conducting web searches, such as on Google, Yahoo and Bing, by causing the subject site to be crawlable by the search bots and to generate links back to the site. *Armour Dep.* at pp. 82-83.

23. Timelines acknowledges that it has a timeline on LifeSnapz.com, that the term timeline was used in a generic sense to describe the graphical representation that it has on part of that service in at least one instance, and that there is a graphical timeline on Timelines SE. *Hand Dep.* pp. 43, 108. But, there are not timelines on Timelines.com because there is no graphical presentation of information there. *Id.* at pp. 43-44.

24. Timelines was not concerned about Dipity’s generic use of the term timeline because it was being used in the generic sense. *Id.* at p. 119. Timelines was not concerned with

other companies' use of the term timeline in a generic sense because Timelines does not use the term in such a manner. *Id.* at p. 211. Dipity offers a technical solution to a person to create a timeline for a task, while Timelines.com offers a service to record history collaboratively and in an event-by-event basis and connect those events with anybody else that has recorded an event on Timelines.com. *Armour Dep.* at p. 62.

**Facebook Announces Its "Timeline," Holds A Televised Conference,
And Uses The Term In A Brand And Trademark Way**

25. Facebook has admitted that it was aware of Timelines before it announced Facebook "Timeline." *See* Facebook's Answer to Plaintiff's First Amended Complaint and Counterclaims Against Plaintiff ¶ 1, ECF No. 33. [REDACTED]

[REDACTED] *See* Deposition of Sam Lessin ("Lessin Dep.") at pp. 54-55. True and correct copies of the pages from the Lessin Dep. cited herein are filed herewith as Exhibit 5. Facebook was developing its "Timeline" to replace, in part, its prior "Wall." *Id.* at pp. 54-55, 111-12 [REDACTED]

[REDACTED] A true and correct copy of the first page of [REDACTED] e-mail is attached hereto as Exhibit 6. *See also* Facebook [REDACTED] a true and correct copy of which is attached hereto as Exhibit 7, (noting at Highlight No. 3 therein as follows: [REDACTED]

[REDACTED] Facebook's Response to Timelines' Third Set of Requests To Admit No. 60, admitting that the [REDACTED] document is an authentic document, a true and correct copy of which is filed herewith as Exhibit 8; Lessin Dep. at p. 91. [REDACTED]

[REDACTED]

[REDACTED] Lessin Dep. at p. 86.

26. Contemporaneous with the development of Facebook’s “Timeline,” Mr. Zuckerberg commented internally to Facebook’s employees on a number of topics in advance of an upcoming Facebook developers conference to be held in September 2011 (referenced below).

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] See Ex. 7 (emphasis added); see also Ex. 8 No. 60 (admitting that Ex. 7 is an authentic document; Lessin Dep. at p. 91 (admitting that Ex. 7 is an authentic document).

27. [REDACTED]

[REDACTED]

[REDACTED] See Sam Lessin, September 16, 2011 “post,” a true and correct copy of which is filed herewith as Exhibit 9; see also Lessin Dep. pp. 134-37 (admitting that Ex. 9 is an authentic document).

28. On September 22, 2011, Facebook held its fourth annual Developers’ conference (also known as the f8 Conference). A video of the opening presentation from this F8 conference is filed with these Response Materials as Exhibit 10. See Facebook’s Response to Request to Admit No. 1 in Timelines’ First Set of Requests to Admit, a true and correct copy of which is filed herewith as Exhibit 11.

29. At this conference, Mr. Zuckerberg, announced Facebook’s new “Timeline” in his live presentation (which appears after the Andy Samberg humorous introduction). See Ex. 10.

Mr. Zuckerberg's presentation begins at approximately 7 minutes and 40 seconds into the video (hereafter we refer to 7:40, etc. for time references).

30. The precursor to Facebook's "Timeline" was a page called the "Wall." Ex. 10 (discussion begins at approximately 12:05). Facebook had trademarked the term "Wall." A true and correct copy of the USPTO registration with Reg. No. 3,723,894 is attached hereto as Exhibit 12.

31. At approximately 13:35, Mr. Zuckerberg begins the announcement of Facebook's new "Timeline," which he calls the "heart of your Facebook experience." Ex. 10. He then says that Facebook is calling it "Timeline," with a capital "T," which is projected onto a screen behind him in a brand and trademark way. *Id.* at 14:00 – 14:30. Mr. Zuckerberg notes that "Timeline" is just like the "Wall," which it replaced, but is "much more nicely designed." *Id.* Throughout the presentation, "Timeline" appeared behind Mr. Zuckerberg, used with a capital "T." *Id.*

32. At 31:20, a video that Mr. Zuckerberg played for the audience about Facebook's "Timeline" finishes and the screen flashes "Introducing Timeline" (again using a capital "T"). *Id.*

33. Attached hereto as Exhibit 13 are true and correct copies of certain of the pages from Facebook's Amendment No. 8 to its Form S-1 Registration Statement that Facebook filed with the Securities and Exchange Commission in connection with its Initial Public Offering ("IPO"). *See* Ex. 11 at No. 7. Within this filing with SEC, Facebook referred to its "Timeline" in a brand and trademark way, calling it a "product," Ex. 13 at pp. 4, 83, 86, 94, 95, 96 (underlined), and always using a capital "T" to describe it, *Id.* at pp. 4, 53, 83, 86, 94, 95, 96 (underlined).

34. Facebook's Rule 30(b)(6) corporate deponent, Sam Lessin, who also is Facebook's Director of Product Placement, referred to Facebook's "Timeline" as a product. Lessin Dep. at pp. 23, 29-30.

35. Eric Antonow, Facebook's vice president of product marketing consistently refers to Facebook's Timeline as a product. See Deposition of Eric Antonow ("Antonow Dep.") at pp. 73, 80, 81, 87. True and correct copies of the pages cited from the Antonow Dep. are filed herewith as Exhibit 14.

36. Facebook describes its Timeline product as a feature which allows Facebook's users to review the timeline of all posts that they have made to Facebook. See Lessin Dep. at p. 49. Facebook also describes it as a chronological expression of information that a Facebook user has entered into Facebook. *Id.*

37. Facebook also describes its Timeline to its users as "your collection of photos, stories and experiences that tell your story." See Lessin Dep. at pp. 51, 52-53; see also Facebook's Marketing and Help Center page, a true and correct copy of which is attached hereto as Exhibit 15.

38. [REDACTED]

Lessin Dep. at p. 64.

39. [REDACTED]

[REDACTED] and secured headlines from media such as "Facebook Timeline Review: This is the Greatest Thing Facebook's Ever Done." See Facebook's post-f8 PowerPoint presentation, a true and correct

copy of which is filed herewith as Exhibit 16; *see also* Ex. 8 at No. 71 (admitting this is true and correct document).

40. When Facebook “rolled out” Timeline after the aforementioned f8 Conference, it made engineering changes to the Facebook website that caused people searching for Timelines’ Facebook page to, instead, be directed to Facebook’s Timeline page, and this lasted for at least a week. Lessin Dep. at p. 277-83. Facebook only corrected the re-direction after Timelines filed this lawsuit. *Id.*

41. Facebook’s use of Timelines’ trademarks has dried up Timelines’ funding, and has called into question Timelines’ business model because it is difficult for Timelines to compete in an environment where the world’s biggest social media company is “stomping” all over it. Hand Dep. at pp. 32-33.

42. Facebook’s Founder and CEO Mark Zuckerberg refers to Facebook’s “Timeline” [REDACTED] *See* September 5, 2011 e-mail from Mr. Zuckerberg to a number of Facebook recipients (emphasis added), a true and correct copy of which is attached hereto as Exhibit 17; *see also* Ex. 8 at No. 53 (admitting this is a true and correct document). [REDACTED]

[REDACTED]
[REDACTED] *See* Ex. 8 at No. 54 (admitting this is a true and correct document).

43. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] *See* Ex. 7; *see also* Ex. 8 at No. 60 (admitting this is a true and correct document).

44.

[REDACTED]

[REDACTED] See “f8 for Marketers,” a true and correct copy of which is attached hereto as Exhibit 19; *see also* Ex. 8 at No. 62 (admitting that this is a true and correct document).

45.

[REDACTED]

[REDACTED] See September 5, 2011 email from Mr. Zuckerberg to Chris Cox, a true and correct copy of which is attached hereto as Exhibit 20; *see also* Ex. 8 at No. 64 (admitting this is a true and correct document).

46.

[REDACTED]

[REDACTED] See Draft of Outline of Mark Zuckerberg’s Keynote Address for the Facebook f8 conference, a true and correct copy of which is attached hereto as Exhibit 21 (emphasis added); Ex. 8 at No. 65. [REDACTED]

[REDACTED] See Ex. 17; *see also* Ex. 8 at No. 53 (admitting this is a true and correct document).

47. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED] a true and correct copy of which is attached hereto as Exhibit 22; *see also* Ex. 8 at No. 70 (admitting this is a true and correct document).

48. Facebook uses “Timeline” in a trademark way in a marketing video that introduces the “Timeline” product. See Facebook’s “Introducing Timeline Video,” a true and correct copy of which is filed herewith as a DVD as Exhibit 23; *see also* Ex. 8 at No. 67 (authenticating the video). After the video shows a montage of clips that demonstrate what “Timeline” is, it cuts to a screen shot with “Introducing Timeline.” *See* Ex. 23; *see also* Ex. 8 at 67 (authenticating the video).

49. Facebook also refers to “Timeline” in a trademark way in a Roadshow Video marketed to potential investors in connection with Facebook’s initial public offering. *See* Facebook’s Video Roadshow, a true and correct copy of which is filed herewith as a DVD at Exhibit 24 (see video at approximately 4:45); *see also* Ex. 8 at No. 68 (authenticating video). In its Road Show Video, Facebook explains that “Timeline” is one of the two most critical products offered by Facebook.

50. Facebook does not charge its users to use “Timeline.” *See* Lessin Dep. at p. 157-58.

51. Facebook maintains “Community Standards” that it asks its users to respect, which include requesting that its users respect others’ trademarks. *See* Facebook Community Standards, a true and correct copy of which is attached hereto as Exhibit 25; *see also* Lessin Dep. at pp. 295-97 (admitting this is a true and correct document).

Media refer to Facebook’s “Timeline” in a Brand and Trademark Manner

52. News media refer to “Timeline” in a trademark and brand way when they mention “Timeline” as a product offered by Facebook. *See* Ex. 16; *see also* Ex. 8. at No. 71 (admitting that this is a true and correct document).

People Confused Timelines and Facebook’s “Timeline” After Facebook’s Announcement

53. When Facebook announced “Timeline,” people who were aware of Timelines were confused by the announcement and wrote or called Timelines believing that it had done a deal, or otherwise had made an agreement, with Facebook. *See* Deposition of Randy Cassidy at p. 50 (“I picked the phone up to congratulate [Brian Hand] ... on the fact that Facebook had picked his Timelines software”), p. 52 (“I truly believe that whatever ... Facebook was offering was the same product that Brian [Hand] had invented himself; obviously, with the help of his staff.”); Deposition of Keith Koeneman at p. 32 (“I immediately think of [Brian Hand’s] company, Timelines, Inc., and, and LifeSnapz.”), p. 51 (“And my immediate reaction was, was actually positive. Brian must have either sold his company to Facebook or did some sort of business deal with Facebook because that’s how they have his feature.”), pp. 87-88 (“And my first reaction was that’s great. Brian [Hand] either sold his company to Facebook or he did some deal with Facebook. So if, you’re asking me if I was confused, I was definitely confused.”), p. 88 (“And I thought how does Facebook have a timeline feature if Brian [Hand] didn’t either sell his company to them or do a deal with them. So I was confused then.”), p. 89 (“And I was very confused about how Facebook could have a timeline feature without either buying Timelines,

Inc., or doing a legitimate business transaction with Timelines, Inc. So for the last year I've been consistently confused about that every time I thought about it."), pp. 94-95 ("I thought Facebook either bought Timelines, Inc., or they did some sort of legitimate business transaction with Timelines, Inc., and that's how they had the capability."), p. 95 ("I thought they copied it. You know, like Samsung copied Apple's iPhone, I thought they copied it."), p. 96 ("I thought that Facebook had ripped off Timelines, Inc.'s, concept, just like, you know, Samsung ripped off Apple's concept."), Deposition of Esther Barron at p. 42 ("I mentioned to Brian Hand that when I learned of Facebook's Timeline update or application, that I wondered whether it was connected to his company in some way."), Deposition of Don Jenkins at p. 36 ("What happened was I saw information that led me to believe that the company had been purchased by Facebook. At least that was my assumption. And then looked on the website to find a press release that would say, hey, we've just purchased this company for so many X of millions of dollars or what have you and none of that information was available...."); Deposition of Pam Cole at p. 30 ("I didn't know if [Timelines, Inc.] had sold it to Facebook or if they had some sort of software that you could use on Facebook or what it was."), Deposition of Thomas R. Fallon, at p. 23 ("I thought maybe [Timelines, Inc.] sold their service to Facebook."). True and correct copies of the pages from the Cassidy, Koenenman, Barron, Jenkins, Cole, and Fallon Depositions are filed herewith as Exhibits 26 through 31, respectively.

54. Other individuals, believing that Timelines was Facebook, wrote Timelines (often in harsh terms) asking Timelines to change their Facebook settings. *See* Group Ex. 32 (containing collection of these requests); *see also* Hand Decl. ¶ 19 (stating that the documents contained in Group Ex. 32 are true and correct documents). By way of example, the comments include: "timelines sucks," "how do i get this off my facebook.it has screwed everything up," "Timeline, I am having trouble with the new account layout on facebook. How can I take

timeline off my profile, and go back to the old facebook layout? Thanks for the help,” “how do I get a timeline,” “heelo how do I get timeline on my facebook,” “can you add timeline in my facebook,” and “What the hell, I am not getting the timeline. Someone help me please.....” See Grp. Ex. 32; see also Hand Decl. ¶ 19 (stating that these are true and correct documents).

Facebook Aggressively Litigates Trademark Terms That Appear To Be Generic

55. Facebook’s own name arises from the generic college yearbooks that were known as face books. See Alan J. Tabak, Hundreds Register for New Facebook Website, HARV. CRIMSON, Feb. 9, 2004, available at <http://www.thecrimson.com/article/2004/2/9/hundreds-register-for-new-facebook-website/>. A true correct copy of which is attached hereto as Exhibit 33.

56. When other entities have attempted to register or use any term close to Facebook’s registrations, such as “WALL” or terms using “BOOK,” Facebook has aggressively attacked those entities in courts and before the Trademark Trial and Appeal Board (“TTAB”), including challenges to efforts to trademark: FACEMAIL (Ex. 34.), BLACKFACES (Ex. 35.), DWC FACES (Ex. 36.), FACEPLACE@ORU (Ex. 37.), DATEBOOK (Ex. 38.), FACE DIAL (Ex. 39.), SUPERWALL (Ex. 40.), DRUNK WALL (Ex. 41.), VETBOOK (Ex. 42.), TALKBOOK (Ex. 43.), DOCTORBOOK (Ex. 44.), GEEZERBOOK.COM (Ex. 45.), SHAREWALL (Ex. 46.), LAWYERBOOK (Ex. 47.), TEACHBOOK (Ex. 48.), BOSS BOOK (Ex. 49.), SAFARIBOOK (Ex. 50.), MYBOOKSPACE (Ex. 51.), FACEMAIL (Ex. 52.), PLACEBOOK (Exs. 53-54.), FACEPILES (Ex. 55.), FACEBROKER (Ex. 56.), SHAGBOOK (Ex. 57.), POCKETBOOK.COM (Ex. 58.), ROTTENBOOK (Ex. 59.), ETORO OPENBOOK (Ex. 60.), F* (Ex. 61.), FACEBARKK (Ex. 62.), FACEDATE (Ex. 63.), HEALTHBOOK (Ex. 64.), SCIENCEBOOK (Ex. 65.), FACADEBOOK (Ex. 66.), FAITHBOOK (Ex. 67.),

FACEMEETING (Ex. 68.), BOOK (Ex. 69.), GRACEBOOK (Ex. 70.), FACEMOD (Ex. 71.), FACEBROKER (Ex. 72.), FACETALK (Ex. 73.), LIFEBOOK (Ex. 74.), FACEDEKK (Ex. 75.), PRAYBOOK (Ex. 76.), and BUDBOOK (Ex. 77.), TEACHBOOK, (Exs. 78-79.), LAMEBOOK (Ex. 80.), FACEPORN (Ex. 81.), FACE BOOK OF SEX (Ex. 82.). Facebook admitted to each of these oppositions via its Objections and Responses to Plaintiff Timelines, Inc.'s Second Set of Requests for Admission, Nos. 9-52, a true and correct copy of which is attached hereto as Exhibit 83. Facebook's TTAB Notice of Opposition filings, referenced next to each of the attempted marks noted above are filed herewith as Exhibits 34 through 77. *See* Ex. 83 at Nos. 9-52 (admitting these are true and correct documents). Facebook further admitted to each of the complaints. Ex. 11 at Nos. 2-5. Facebook's complaints, referenced next to each of the marks noted above, are filed herewith as Exhibits 78 through 82. *See* Ex. 11 at Nos. 2-5 (admitting these are true and correct documents). (To save paper, only the Notice of Oppositions and Complaints are included.)

57. Facebook has applied for and registered several marks, including "WALL," "POKE," "FACEBOOK POKE," "LIKE," "LIKE & *design*," "FACEBOOK," "FACEBOOK & *design*," "FB," "F8," "FACEBOOK PAGES," "FACEBOOK ADS," "FACEBOOK INSIGHTS," "FACEPILE," "FACE," "REACH GENERATOR," "GRAPH SEARCH," "SOCIAL ADS," and "SOCIALADS." True and correct copies of Facebook's applications and registrations from the USPTO are attached hereto as Group Exhibit 84. (To save paper, only the first page is included.)

Facebook Has Made [REDACTED] Using Timelines' Trademarks

58. Timelines provided Facebook with the expert report of its damages expert David Haas. A true and correct copy of Mr. Haas' report is filed herewith as Exhibit 85. Therein, Mr. Haas opined that Timelines has suffered in excess of [REDACTED] in losses because that is the

approximate advertising revenue that Facebook has earned using Timelines' federally registered trademarks to earn advertising revenue on Facebook Timeline. *Id.* at ¶ 31 (and as generally explained in the report). Facebook's expert did not dispute Facebook's total advertising sales on Facebook "Timeline."

Third Party Uses Are Not The Same As Timelines

59. Third-parties that use the terms timeline or timelines generically are not the same as Timelines. While Timelines permits collaborative sharing of information, the "timelines" that generically are created at or with Mnemograph, SmartDraw LLC, KIDASA, International Reading Association, and Tom Snyder Productions are static. *See* Deposition of J. Anthony Patterson, SmartDraw LLC's Rule 30(b)(6) corporate deponent ("Patterson Dep."), at p. 63, a true and correct copy of which is attached hereto as Exhibit 86; Deposition of Michael Richardson, Mnemograph's Rule 30(b)(6) corporate deponent ("Richardson Dep."), at p. 64, a true and correct copy of which is attached hereto as Exhibit 87; Deposition of Richard Abrams, Abrams Dep., Tom Snyder's Productions' Rule 30(b)(6) corporate deponent ("Abrams Dep."), at p. 33, a true and correct copy of which is attached hereto as Exhibit 88; and Deposition of Bridget Hilferty ("Hilferty Dep."), International Reading Association's Rule 30(b)(6) corporate deponent, at pp. 42-43, a true and correct copy of which is attached hereto as Exhibit 89.

60. With respect to the sharing of information, while Timelines shares events and history with others, SmartDraw LLC, KIDASA, International Reading Association, and Tom Snyder Productions are presentation-based. *See* Patterson Dep. at pp. 32-33, 67-68; Abrams Dep. at pp. 14; Hilferty Dep. at pp. 38-39.

61. In terms of visual presentation, while Timelines does not show information in a linear fashion, Mnemograph, SmartDraw LLC, KIDASA, International Reading Association and

Tom Snyder Productions do. *See* Patterson Dep. at pp. 48-50, 53; Richardson Dep. at pp. 65-67; Abrams Dep. at pp. 25; Hilferty Dep. at pp. 24, 26.

62. While Timelines is web based, SmartDraw LLC, KIDASA, and Tom Snyder Productions are software based. *See* Patterson Dep., at pp. 23, 26, 29, 32, 33; Abrams Dep. at pp. 14, 20, 28.

63. While Timelines is free, Mnemograph, SmartDraw LLC, KIDASA, and Tom Snyder Productions require payments (except for one subset of Mnemograph). *See* Richardson Dep. at pp. 63, 68; Paterson Dep. at p. 66; Abrams Dep. at pp. 51-52.

64. While Timelines is open and anyone can visit, Mnemograph, KIDASA, and Tom Snyder Productions are all closed. *See* Richardson Dep. at p. 34; Abrams Dep. at p. 14, 20, 33.

USPTO

65. A search of the USPTO database shows that in the last four years—since 2009 when it first granted one of Timelines’ trademark applications for TIMELINES—the USPTO has granted multiple trademark registrations on the Principal Register for marks incorporating the term “timeline” or “timelines,” including, among others, “THE TIMELINE OF YOUR LIFE” (Reg. # 4,208,948), for six different classes and including services such as “software applications for virtual community, social networking, photo sharing, and transmission of photographic images; computer services, namely, hosting online web facilities for others for organizing and conducting online meetings, gatherings, and interactive discussions; computer services, namely, providing customized web pages featuring user-defined information and personal profiles; computer services, namely, creating an on-line community for registered users to participate in discussion, get feedback from their peers, form virtual communities, and engage in social networking in the field of social and business events; ... Internet based introduction and social networking services; providing on-line computer databases and on-line searchable databases in

the field of social networking.” A true and correct copy of the registered trademark is attached hereto as Exhibit 90.

66. The USPTO database also shows various applications using the term “timeline” or “timelines” that the Office has already reviewed and found acceptable and published for opposition, but registration just has not issued yet. Among those additional marks found acceptable by the USPTO are: “TIMELINE OF EYE DISEASE” (Serial No. 85572679) and “DYNAMIC TIMELINE” (Serial No. 85794452) (whose services are listed as “[p]roviding an interactive website featuring technology that allows users to preserve memories and personal stories”). True and correct copies of these applications from the USPTO are attached hereto as Group Exhibit 91.

February 14, 2013

Respectfully submitted,

TIMELINES, INC.,
Plaintiff/Counter-Defendant

By: /s/ Douglas A. Albritton
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CERTIFICATE OF SERVICE

I, the undersigned attorney, certify that I electronically filed **TIMELINES, INC.’S LOCAL RULE 56.1(b)(3) RESPONSE TO FACEBOOK, INC.’S LOCAL RULE 56.1(a)(3) STATEMENT OF MATERIAL FACTS, AND TIMELINES’ ADDITIONAL LOCAL RULE 56.1(b)(3)(C) STATEMENT OF ADDITIONAL MATERIAL FACTS THAT REQUIRE THE DENIAL OF SUMMARY JUDGMENT.** Pursuant to Rule 5(b)(3) of the Federal Rules of Civil Procedure and Local Rule 5.9, I have thereby electronically served all Filing Users.

February 14, 2013

Respectfully submitted,

TIMELINES, INC.,
Plaintiff/Counter-Defendant

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