

Exhibit B

1
2 IN THE UNITED STATES DISTRICT COURT
3 FOR THE NORTHERN DISTRICT OF ILLINOIS
4 EASTERN DIVISION

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5 TIMELINES, INC.,

PLAINTIFF,

6
-against-

7 FACEBOOK, INC.,

8 DEFENDANT.

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10
11 DEPOSITION OF DR. ELI SEGGEV

12 New York, New York

13 Thursday, December 6, 2012
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20 Reported by:

21 Rebecca Schaumloffel, RPR, CLR

22 Job 56153
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1 E. SEGGEV

2 Q. That was in an effort to identify
3 an appropriate universe --

4 A. Likelihood of -- I'm sorry. Yes.

5 Q. So when you conduct these
6 surveys, you believe it is important to
7 develop the appropriate universe of
8 participants by screening people who are
9 unlikely to be interested in relevant goods
10 or services of the case?

11 A. That's rule number one.

12 Q. In looking at this entire list of
13 cases, do you have an idea -- let me ask you
14 a question. Did you conduct a survey in each
15 one of these cases?

16 A. Yes. Let me go back for a
17 second, because there may be -- yes. The
18 answer is yes.

19 Q. And approximately how many of
20 those surveys were conducted online?

21 A. Probably, I would say 40% of
22 them.

23 Q. And what rough percentage of
24 those surveys were conducted in person?

25 A. Whenever the occasion called for

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2 research, which if you look at the objective,
3 as I defined it, it was to evaluate the
4 likelihood of confusion between the name of
5 this website and a word that's used in
6 another website, unnamed to the respondents.

7 So you have got to consider the
8 respondent looking -- what information you
9 provided them, and that's what I did.

10 Q. Was this survey designed to test
11 for forward confusion or reverse confusion?

12 A. The simple answer is forward
13 confusion. And the reason I qualify it is
14 because the -- it seems to me that the -- the
15 distinction between forward and reverse is
16 based on what might be called need-based
17 consumer scenario.

18 In our experience in likelihood
19 of confusion, yours, mine, up to this recent
20 time, we were confronted with situations in
21 which people are in a pre-purchase state.
22 They search, they evaluate, they decide what
23 brands to enter in their consideration set,
24 as we refer to it. Then they make a
25 purchase, and it is at that point that we

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2 name is Timelines, web --

3 Q. But did you --

4 A. I'm sorry. After they have been
5 exposed to the website Timelines.

6 Q. But did you consider asking the
7 question in the following terms: Which of
8 the following companies, if any, do you most
9 associate with the website you just reviewed?

10 A. No, I did not, because the
11 critical elements in this environment, in
12 this suit, are the names themselves rather
13 than the websites, the sites.

14 Q. All right. But an association
15 between two words doesn't necessarily lead to
16 an association between the two entities who
17 are using those words.

18 MR. ALBRITTON: Is that a
19 question?

20 Q. Wouldn't you agree?

21 A. Well, the purpose of the study
22 was if -- to find out what are the entities
23 that consumers associate with this word,
24 "timelines."

25 Q. But have you reviewed Dr. Itamar

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2 connection and affiliation?

3 A. You were talking about
4 association and affiliation. You mean
5 connection and affiliation?

6 Q. Yeah, I'm sorry, association and
7 affiliation.

8 A. There is no -- in my mind, but
9 again, it is an empirical question, it would
10 have been quite similar. The only reason
11 that I prefer association is because it is
12 not an affiliation of one website with
13 another website, but the focus was on the
14 names only. So affiliation did not sound to
15 me to represent that reality as well as
16 association. Because affiliation, to me, it
17 means there are entities that are connected,
18 are affiliated in some way.

19 And I wanted to focus, and this
20 research focuses, on the words, on the names,
21 rather than the companies that stand behind
22 it. So that was my rationale.

23 Q. So is it fair to say that you
24 believe the results of your survey show a
25 connection between the word "Timelines" and

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2 Facebook, but not a connection between the
3 Timelines website and the Facebook website or
4 the source of the Timelines website and
5 Facebook; you were focused on the words?

6 A. That is not a correct
7 representation of yours, because you used the
8 term "connection," and I didn't do anything
9 with connection here.

10 Q. I am sorry, let me rephrase that
11 question using the word "association."

12 You showed -- you believe that
13 the results of your survey showed an
14 association between the word "Timelines" and
15 Facebook and not an association between the
16 Timelines.com website and the Facebook
17 website or the source of the Timelines
18 website and Facebook. You were focused on
19 association between the word and Facebook?

20 A. As the question reads, which of
21 the following, and so on, do you associate
22 this name with, which is Timelines.

23 Q. So the answer is yes?

24 A. Yes.

25 Q. If you look at page seven,

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2 Depends on the question.

3 Q. Are you aware of a single case in
4 which a survey that asks respondents only one
5 question about what or who they associate the
6 presented mark with has been accepted by a
7 court?

8 A. I don't know what you mean by
9 that, only one question.

10 Q. Well, a survey similar to the one
11 that you conducted here, where, you know, the
12 question, the key question, I think you would
13 agree, is, "Which of the following companies,
14 if any, do you most associate this name
15 with?"

16 Are you aware of any case where a
17 survey that rested significantly on a single
18 question as to an association between a word
19 and other companies was relied upon to find
20 trademark infringement?

21 A. If you flip that page, you will
22 see there is a second question that belongs
23 to the same sequence, I would argue, that
24 asks for the reasons for so doing. This is
25 in line with likelihood of confusion

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2 procedures that -- whether it is Eveready or
3 Squirt, that ask for the reasons, and so does
4 this survey.

5 So it is really two questions,
6 first of all, and those two questions are --
7 in my view, form a complete set for the
8 purposes of this study.

9 Q. But are there any cases in which
10 an Eveready or Squirt survey relied upon a
11 central question that focused on association
12 between a word and other companies?

13 A. Oh, that's -- sorry, that's a
14 different question. No. This is the first
15 time that I encountered it, and this is --
16 this has been my solution to it.

17 Q. I apologize, I --

18 MR. ALBRITTON: You need a copy
19 of something?

20 MR. WILLSEY: No. I was looking
21 for a different exhibit, but I will
22 find that on a break and circle back
23 to the issue.

24 Q. Did you consider doing -- using
25 any other approaches to this survey? When

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2 incorrectly determined, that could invalidate
3 the results of the survey?

4 A. As a general statement?

5 Q. As a general statement, yes.

6 A. Absolutely, yes. Chapter one,
7 paragraph one of any textbook.

8 Q. And I may know the answer to
9 this, but -- for the reasons that you just
10 stated, but to clarify, you did not make any
11 effort to obtain any information from
12 Timelines regarding their existing user base,
13 the characteristics of their existing
14 subscribers, did you?

15 A. I did not inquire about that.

16 Q. And did you inquire from
17 Timelines or any representative of Timelines
18 as to the intended future audience of
19 Timelines?

20 A. No, sir.

21 Q. You are aware that certain
22 treatises such as McCarthy state that in
23 cases of forward confusion, you should focus
24 the universe on the universe associated with
25 the defendant infringer, right?