

EXHIBIT

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

TIMELINES, INC.,)
)
Plaintiff,)
)
vs.) No. 11-CV-6867
)
FACEBOOK, INC.,)
)
Defendant.)
-----)

DEPOSITION OF ITAMAR SIMONSON
Palo Alto, California
Monday, January 7, 2013
Volume I

Reported by:
CARLA SOARES
CSR No. 5908
Job No. 1585182

Pages 1 - 146

1 other than you conducted a likelihood of confusion
2 survey on behalf of Facebook in this case?

3 A No.

4 Q Were you asked to conduct any other type of
5 survey in this case?

6 A No.

7 Q Did you have occasion to suggest that any
8 other survey be conducted in this case?

9 A No.

10 Q You previously testified that Facebook's
11 counsel retained you to evaluate Dr. Seggev's survey,
12 correct?

13 A Yes.

14 Q Did Facebook or its counsel ask you to render
15 an opinion on whether "timeline" or "timelines" is a
16 generic term?

17 A No.

18 Q Yet in your rebuttal report you state that
19 "timelines" is a generic term, correct?

20 A I did.

21 Q On what do you base your statement?

22 A Well, "timeline" is just a word that I've used
23 generically many times. I went to dictionaries, and the
24 word is defined. I didn't realize that there would be
25 any dispute that the word "timeline" is generic.

1 A Okay. As I said, it is. You know, I can't
2 avoid saying that the word "timeline" seems to me to be
3 beyond dispute generic.

4 Q And that's based on what, sir? Your review of
5 a dictionary and just your everyday experience; is that
6 right?

7 A And the fact that I've read the word in all
8 kinds of contexts many times. Yeah, I think just -- you
9 could say, how do I know that "water" --

10 Q You gave that example. Thank you.

11 A If I may just complete it.

12 Q Please.

13 A How do I know that "water" is generic? Just
14 my everyday experience.

15 Q Sir, you understand that my client has
16 federally registered trademarks in the words "Timelines"
17 and "Timelines.com," correct?

18 A These are legal issues. I know that there is
19 this thing called incontestable, and I know that
20 matters. So I'm not sure if in your case the word
21 "timeline" is an incontestable registered mark by your
22 client. If it is, I assume it has certain meanings.
23 For example, you, I guess, would not need to prove
24 secondary meaning. But these are legal terms. I'm not
25 a legal expert.

1 Q Okay. Thank you.

2 Did you conduct a genericness survey in this
3 case, sir?

4 A No.

5 Q Did you conduct a secondary meaning survey in
6 this case?

7 A I did not conduct any survey in this case.

8 Q And you testified that you did review
9 Dr. Jay's survey; is that right, sir?

10 A Yes.

11 Q And when did you receive a copy of that?

12 A I don't remember the date. I know that I
13 refreshed my recollection just a couple of days ago.

14 Q And refreshing your recollection, was that
15 skimming it for about 30 minutes?

16 A Yes.

17 Q Are you relying on Dr. Jay's report in support
18 of your statement that "timelines" is generic?

19 A No.

20 Q On what do you rely to support the conclusion
21 that you render that because "timelines" is generic,
22 consumer confusion is extremely unlikely in this case?

23 A Simply because the term is used in many
24 different contexts, including on many websites;
25 therefore, it's highly unlikely to be perceived as a

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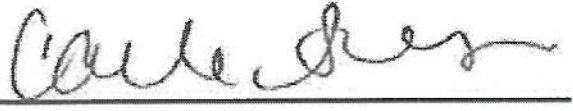
I, the undersigned, a Certified Shorthand Reporter of the State of California, do hereby certify:

That the foregoing proceedings were taken before me at the time and place herein set forth; that any witnesses in the foregoing proceedings, prior to testifying, were placed under oath; that a verbatim record of the proceedings was made by me using machine shorthand which was thereafter transcribed under my direction; that the foregoing is an accurate transcription thereof.

I further certify that I am neither financially interested in the action nor a relative or employee of any attorney or party to this action.

IN WITNESS WHEREOF, I have this date subscribed my name.

Dated: January 10, 2013



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