

Exhibit A

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

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

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

DEPOSITION of ITAMAR SIMONSON, Volume I,
taken on behalf of Plaintiff, at 3175 Hanover Street,
Palo Alto, California, beginning at 10:10 a.m., and
ending at 2:54 p.m., on Monday, January 7, 2013, before
CARLA SOARES, Certified Shorthand Reporter No. 5908.

1 APPEARANCES:

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3 For the Plaintiff:

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21 ALSO PRESENT: Kat Johnston, IP Counsel, Facebook

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1 A Yes. Confusion, secondary meaning,
2 genericness, dilution, these are all legal terms that
3 correspond to consumer behavior concepts.

4 Q Is your focus, sir, on those consumer behavior
5 concepts?

6 A Well, you try to link the two.

7 Q That is, you try to link the legal terms with
8 the consumer behavior concepts?

9 A Yes, in part. Also, there is the specific
10 issue of the survey methods used to assess confusion,
11 genericness, dilution, secondary meaning. Those survey
12 methods measure something. The question is, what are
13 they measuring and how different survey methods produce
14 different consumer behavior and understanding, and in
15 many cases, different results.

16 Q Sir, you also indicate that another field of
17 expertise is human judgment and decision-making.

18 What does that mean?

19 A Well, actually, that's the doctoral course
20 that I'll start teaching on Wednesday.

21 There is a fairly large field focused on the
22 description of how people make judgments and choices or
23 decisions. I've conducted a great deal of research in
24 that area, and many other people did.

25 Q Sir, other than the articles that you've

1 that it makes a difference which method you use. But
2 this might be a specific case where I'm happy to give
3 you an answer.

4 But a generic blanket statement saying, well,
5 there's some cases where it's permissible, I'm just not
6 sure what it means.

7 BY MS. MOORE:

8 Q What are you not sure about? In some cases --
9 you said it depends. So I said, okay. Let's narrow
10 that down then.

11 In some cases, would you agree with the
12 proposition that a researcher has a certain degree of
13 latitude in how he goes about conducting his research?
14 Setting aside that you don't know those certain
15 instances or I haven't set them forth for you.

16 MR. NORBERG: Objection to form.

17 THE WITNESS: I can't give you an answer until
18 you let me know the specifics.

19 BY MS. MOORE:

20 Q Is a researcher then restricted by research
21 methodologies?

22 A In many cases, a researcher is restricted to
23 either a particular one, or maybe has a choice between
24 two.

25 Q In many instances or many cases, what are

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 Let's say I skimmed it, yes.

2 Q Anything else that you can think of now that
3 you would have reviewed?

4 A No. If I think of something else, I'll let
5 you know.

6 Q I appreciate that. So Dr. Jay's survey you
7 skimmed. How much time would you have spent reviewing
8 that?

9 A Maybe half an hour.

10 Q So you base your statement that "timelines" is
11 generic based on your review of a dictionary; is that
12 right?

13 A Dictionary, and just a person who's using this
14 word, who has encountered the word in various contexts,
15 just everyday experience.

16 Q So this is just your speculation in this case,
17 is it not, sir?

18 A Well, you can say -- let's say if I said
19 "water" is generic, you know, I haven't conducted that
20 study, but it seems to me self-evident.

21 I did study genericness, published an article,
22 a couple of them, on the subject. I conducted quite a
23 few genericness surveys. So I have some experience as
24 to what terms people tend to perceive as generic as
25 opposed to as a trademark or brand name.