

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

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

**TIMELINES’ RESPONSE BRIEF IN OPPOSITION TO FACEBOOK’S
MOTION *IN LIMINE* NO. 7: TO EXCLUDE EVIDENCE, ARGUMENT, AND
TESTIMONY REGARDING ALLEGATIONS OF FACEBOOK’S “GENERAL
DISRESPECT FOR THE RIGHTS OF OTHERS”**

Plaintiff/Counter-Defendant Timelines, Inc. (“Timelines” or “Plaintiff”) submits this response brief in opposition to Defendant/Counter-Plaintiff Facebook, Inc.’s (“Facebook”) Motion *In Limine* No. 7: To Exclude Evidence, Argument, and Testimony regarding allegations of Facebook’s “general disrespect for the rights of others” (“Motion”), and states as follows:

INTRODUCTION

Facebook’s Motion should be denied for the simple and straight forward reason that it is overly broad and vague. Facebook seeks to exclude evidence related Facebook’s “disrespect for the rights of others.” (Mtn. pp. 1,2,4.) But because Facebook does not explain or sufficiently identify the specific evidence it wants to exclude, Timelines cannot determine which evidence it can or cannot offer at trial. Facebook, for instance, fails to describe any specific testimony, conduct, or evidence within the broad category of what Facebook refers to as Facebook’s “general disrespect for the rights of others.” The closest Facebook comes to using any specificity is its obscure reference to a “purported hacking culture.” But Facebook again does not sufficiently explain what this means or, more specifically, which particular evidence related

to this “purported hacking culture” should be excluded. Facebook’s lack of specificity is especially vexing since Facebook, according to its CEO, *does* maintain a “hacking culture.” For the reasons explained more fully below, this Court should deny Facebook’s Motion.

ARGUMENT

I. Facebook’s Motion is Vague and Unclear.

This Court has broad discretion to deny a motion *in limine* that is unclear, broad, or vague. *See Abbott Labs. v. Sandoz, Inc.*, 743 F. Supp. 2d 762, 782 (N.D. Ill. 2010) (denying broad motion *in limine* that did not seek to exclude any specific testimony or evidence); *Nat’l Jockey Club v. Ganassi*, No. 04 3743, 2009 WL 2177217, at *13 (N.D. Ill. July 21, 2009) (denying motion *in limine* where the purpose was unclear); *Tomao v. Abbott Laboratories, Inc.*, No. 04 C 3470, 2007 WL 141909, at *6 (N.D. Ill. Jan. 16, 2007) (denying motion *in limine* to bar evidence that Plaintiff was allegedly treated unfairly at Abbott as vague and unclear); *United States v. Messino*, 873 F.Supp. 1177, 1188 (N.D. Ill. 1995) (“[D]efendant’s motion is too vague to warrant a ruling that all incidents fitting into defendant’s description should be excluded.”).

Here, Facebook never explains what specific testimony or evidence or what specific conduct that it seeks to exclude at trial. Instead, Facebook simply states, in the most general sense imaginable, that Timelines should be barred from offering any evidence related to Facebook’s or Mr. Zuckerberg’s respect (or lack of respect) for the rights of others. (*See* Mtn. p. 3.) At trial, Timelines intends to argue that Facebook does *not* respect the rights others—i.e., Timelines’ trademark rights. But given the vague and broad language in Facebook’s Motion, Timelines would even be prevented from arguing this.

Facebook’s reference to a “purported hacker culture” is slightly more specific, but still, too vague and broad for Timelines to determine which evidence falls under this category. Again,

Facebook never mentions any specific statements or references that it wants to exclude. This is especially problematic since Mr. Zuckerberg has touted, in Facebook's S-1 filing,¹ that Timeline "came out of a Hackathon." (*See* Facebook, Inc., Registration Statement (Form S-1) (February 1, 2012), p. 69, attached hereto as Exhibit A.) Given the vague language of Facebook's Motion, Timelines would be prevented from effectively cross-examining a witness on the issue of how and when Timeline was developed.

In any event, evidence related to Mr. Zuckerberg's comments regarding a "hacking culture" is admissible and is not, as Facebook argues, improper character evidence. (*See* Mtn. p. 3.) Here, Timelines would not be using this evidence to prove "propensity" or "conformity therewith." Instead, Mr. Zuckerberg's statements and other evidence of a "hacking culture" constitute a party admission under Fed. R. Evid. 801(d)(2). There is ample evidence that demonstrates that Facebook, not only maintains a "hacker culture," but that Facebook is actually quite proud of it. Facebook, for instance, holds an annual hacker competition in which it invites hackers from around the world to solve hacking problems. On top of that, Mr. Zuckerberg has explained that Facebook "cultivated a unique culture . . . that we call the Hacker Way." (Facebook, Inc., Registration Statement (Form S-1) (February 1, 2012), p. 69.) Here, one of the world's most recognized CEOs is directly describing his company's corporate culture. This is indeed circumstantial evidence and probative of the issue of whether Facebook acted in good faith or intentionally infringed Timelines' trademark.

¹ The Court can take judicial notice of Facebook's S-1 filing. *See George v. Kraft Foods Global, Inc.*, 674 F. Supp. 2d 1031, 1044 (N.D. Ill. 2009) ("[T]he court may consider evidence of which it can take judicial notice, and that includes SEC filings.") (citations omitted).

CONCLUSION

In summary, Facebook has not sufficiently explained or identified the evidence that it seeks to exclude at trial. Because it has not done so and because some of the evidence that Facebook has vaguely referenced is relevant and admissible, Timelines cannot determine which evidence is or is not the subject of Facebook's Motion. For the reasons stated above, Timelines, Inc. requests that the Court deny Facebook's Motion *In Limine* No. 7: To Exclude Evidence, Argument, and Testimony regarding allegations of Facebook's general disrespect for the rights of others.

Dated: April 15, 2013

Respectfully submitted,

TIMELINES, INC.,
Plaintiff/Counter-Defendant

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CERTIFICATE OF SERVICE

I, the undersigned attorney, certify that I electronically filed foregoing document. 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.

DATED: April 15, 2013

Respectfully submitted,

TIMELINES, INC.,
Plaintiff/Counter-Defendant

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