

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

TIMELINES, INC.,)	
)	
Plaintiff-Counterdefendant,)	
)	Civil Action No. 11-cv-06867
v.)	Judge John W. Darrah
)	
FACEBOOK, INC.,)	
)	
Defendant-Counterplaintiff.)	Jury Trial Demanded

**FACEBOOK, INC.’S ANSWER TO PLAINTIFF’S FIRST AMENDED
COMPLAINT AND COUNTERCLAIMS AGAINST PLAINTIFF**

Defendant Facebook, Inc. (“Facebook”), by and through its counsel, answers the First Amended Complaint of Plaintiff Timelines, Inc. (“Plaintiff”) and asserts counterclaims against Plaintiff as set forth below. Unless specifically admitted, Facebook denies each of the allegations in Plaintiff’s First Amended Complaint, including but not limited to any assertions made in any section headers in the First Amended Complaint.

ANSWER

NATURE OF THE ACTION

1. This matter seeks to protect Timelines, a small company headquartered in Chicago that has been in business for approximately five years, from being rolled over and quite possibly eliminated by the unlawful action of the world’s largest and most powerful social media company, Facebook. Facebook has announced its intention to use an exact or almost exact replica of Timelines’ federally registered “TIMELINES” trademarks as the centerpiece of Facebook’s new product offering going forward. Given the size and reach of Facebook, its use of Timelines’ registered trademarks on goods and services confusingly similar to those offered by Timelines will essentially eliminate Timelines and leave the public with the confusing impression that Facebook is actually the owner of the TIMELINES Marks, that Timelines and Facebook are somehow affiliated, or that Timelines’ use of the TIMELINES Marks actually infringes upon Facebook’s rights. In the event that Facebook moves forward with release of its “Timeline” product offering calling it “Timeline,” consumer confusion, including reverse trademark confusion, between Facebook and Timelines will invariably result. Indeed, numerous individuals already have reached out to Timelines to ask it if Facebook’s Timeline is affiliated with Timelines or vice versa. Facebook knew, or should have known, of Timelines’ federally

registered trademarks months, if not years, before it decided to pursue its Facebook Timeline offering. Yet, Facebook never reached out to Timelines and has now cynically claimed in this litigation that it is Timelines that waited too long when it took mere days to commence litigation once it learned for the first time of Facebook's Timeline. Any steps that Facebook took to name, and then roll out, its new offering "Timeline" were taken with actual or constructive knowledge of Timelines' federally registered trademarks, and Facebook is a company with the means and resources to have understood the risks that it was taking by taking steps inconsistent with Timelines' federally registered trademarks. Thus, there is no possible, legally recognized prejudice that Facebook can claim arising from this action.

ANSWER: With respect to the Plaintiff's description of the nature of this action, Facebook admits that it announced its intention to use "timeline" to fairly and accurately describe a feature of a new user interface, which allows individual users to graphically display the events of their personal lives in chronological order along a vertical bar. Facebook further admits that, as a result of a routine trademark search, it was aware of Plaintiff's federal trademark registrations for marks featuring the term "timelines" before it announced and began rolling out its new user interface, but determined that (a) the term "timelines" is merely descriptive of, or generic for, the services offered by Plaintiff and thus Plaintiff's trademark registrations are unenforceable and subject to cancellation, and (b) Facebook's use of the descriptive term "timeline" for its new user interface feature is both fair and non-infringing. Facebook lacks knowledge or information sufficient to form a belief as to the truth of the allegations that Plaintiff is a small company headquartered in Chicago that has been in business for approximately five years, and that "numerous individuals have reached out to Timelines to ask it if Facebook's Timeline is affiliated with Timelines or vice versa," and on that basis, denies the same. The remaining allegations contain legal conclusions to which no responses are required. To the extent responses are required, Facebook denies the remaining allegations in Paragraph 1.

BACKGROUND ALLEGATIONS

2. Timelines owns and operates, among other things, Timelines.com. This website

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 and people. Anyone can gain access and be able to post Content to Timelines.com simply by creating an account.

ANSWER: Facebook admits that the Timelines.com website appears to allow users to list events and contribute other content related to events and people in a chronological manner so as to create historical timelines for educational purposes. Facebook lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 2, and on that basis, denies the same.

3. 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. In connection with any such posted event, any user who accesses the website can add additional or new Content for that event. 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. USER B may also post additional information about the Civil War, perhaps about the existing technology of the day. The information will be presented on the Timelines website in chronological order and will also appear whenever anyone accesses the site and searches for information about the Civil War. This same process could be used by family members chronicling happenings surrounding a family event or the history of an individual within the family.

ANSWER: Facebook admits that the Timelines.com website appears to allow users to arrange information in chronological order. Facebook further admits that while it appears that the Timelines.com website conceivably could be used to chronicle personal events, there is no indication that it is used in that manner; rather, the site appears to be used to create timelines concerning public historical events such as assassinations of public figures, battles of the American Revolution, developments in the civil rights movement, disasters, and well-known achievements in sports. Facebook lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 3, and on that basis, denies the same.

4. Timelines is also an application service provider (ASP) for several large publishers including The Boston Globe, The St. Louis Post-Dispatch, and The Milwaukee

Journal Sentinel. See <http://timelines.boston.com/redsox>. In connection with these offerings, users of those publishers' websites can review content organized by event similar to the way content is organized on Timelines.com. The content for these publishers is all created by the particular publisher and does not contain user-Content. For example, at <http://timelines.boston.com/redsox>, a visitor to the website can access information about, among other things, a particular Red Sox game, about the entire season, or about historical match-ups against particular opponents.

ANSWER: Facebook lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 4, and on that basis, denies the same.

5. Timelines is the owner of, among others, the federally registered trademarks "Timelines" (U.S. Reg. No. 3,684,074 and pending U.S. Application No. 85,432,026), "Timelines.com" (U.S. Reg. No. 3,764,134), and the "Timelines" design mark (U.S. Reg. No. 3,784,720) (collectively "the TIMELINES Marks").

ANSWER: Facebook admits that the U.S. Patent and Trademark Office ("PTO") records currently list Plaintiff as the owner of U.S. Trademark Registration Nos. 3,684,074, 3,764,134, and 3,784,720 and U.S. Trademark Application Serial No. 85/432,026. Facebook lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 5, and on that basis, denies the same.

6. As the world's largest social media site, Facebook allows individuals and entities to maintain "Facebook pages." Interested Internet users can access those "Facebook pages" to obtain information posted on those pages either by visiting those web pages or by registering to be notified when content is posted to those pages.

ANSWER: Facebook admits the allegations in Paragraph 6.

7. Like thousands of other businesses, plaintiff Timelines maintains a Facebook page, www.facebook.com/timelines. In the past, when an Internet user visited Facebook and searched for Timelines, the search results returned Timelines' Facebook page and a partial logo that the user could click on and be linked to Timelines' Facebook page.

ANSWER: Facebook admits that Plaintiff maintains a FACEBOOK page at www.facebook.com/timelines. Facebook lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 7, and on that basis, denies the same.

8. On or about September 22, 2011, Timelines learned that Facebook is planning to launch, in the very near future, a product/service available to Facebook users called “Timeline.” See www.facebook.com/about/timeline. This product/service is identical or nearly identical to what Timelines offers. See www.timelines.com.

ANSWER: Facebook admits that it announced a change to the profile interface of its Facebook service, namely a new user interface feature that allows individual users to graphically display the events of their personal lives in chronological order along a vertical bar, and used the term “timeline” to fairly and accurately describe that feature. Facebook lacks knowledge or information sufficient to form a belief as to the truth of the allegation that Timelines learned about this new feature on or about September 22, 2011, and on that basis, denies the same. Facebook denies all remaining allegations in Paragraph 8.

9. Facebook announced the launch of its Timeline product at its annual “Developer Conference” on September 22, 2011 (“F8 Conference”). The announcement of “Timeline” was the central component of Facebook CEO Mark Zuckerberg’s address to the public. During that address, Mr. Zuckerberg consistently referred to Facebook’s Timeline in a trademark way and as the identifier for a specific product or service. Additionally, the word Timeline was capitalized in all of the captioning to Mr. Zuckerberg’s address as well as the slides and images he showed as part of his presentation.

ANSWER: Facebook admits that it announced the use of “timeline” to fairly and accurately describe its new chronologically based user interface at its f8 conference on September 22, 2011. Facebook further admits that Mark Zuckerberg, Facebook’s CEO, discussed the “timeline” feature during his public address. Facebook also admits that the descriptive term “Timeline” was capitalized in the captioning to Mr. Zuckerberg’s address as well as in certain slides and images used in his presentation, as were other descriptive or generic terms such as “Platform,” “Groups,” and “Photos.” Facebook denies the remaining allegations in Paragraph 9.

10. Facebook has first-hand knowledge of the confusion that has already been created due to its proposed launch of its Timeline product. Among other reasons, starting soon after Facebook’s announcement and then for days after (until Timelines appeared in court on its Motion for a Temporary Restraining Order), Facebook re-directed Internet users attempting to

access Timelines' Facebook page (at www.facebook.com/timelines) to Facebook's own Timeline product offering. Put another way, a user who tried to access Timelines' Facebook page was, instead, redirected to Facebook's "Timeline" offering. During the period where Facebook either intentionally or accidentally co-opted Timelines' Facebook page, Timelines and its users could not access Timelines' Facebook page.

ANSWER: Facebook admits that for a brief period of time following Facebook's announcement of its new interface feature, users who entered the URL www.facebook.com/timelines were re-directed to www.facebook.com/about/timeline, and that Facebook corrected this technological error shortly after it was brought to Facebook's attention. Facebook denies all remaining allegations in Paragraph 10.

11. Indeed, Facebook's misdirection of users attempting to access Timelines' offering by re-directing them to Facebook's own Timeline product was either (a) specifically intended to prevent Internet users from accessing information about Timelines.com and to persuade users to instead use Facebook's "Timeline" offering; or, (b) purely accidental in which case, if Facebook itself can be that confused regarding the two companies—due to Facebook's use of the TIMELINES Marks for almost identical services—one can imagine how confused a member of the general public will be.

ANSWER: Denied.

12. Facebook's use of the term "Timeline," including its redirection of Internet traffic from Timelines' Facebook page to Facebook's new "Timeline" offering, infringes on Timelines' federally registered trademarks in that it causes confusion regarding the relationship or affiliation of Facebook and Timelines as well as confusion regarding the ownership of the TIMELINES Marks.

ANSWER: Denied.

13. In addition to the various other claims made in this Complaint, Facebook's actions present a clear example of reverse trademark confusion: the senior user, Timelines, will be absolutely overwhelmed and swallowed up by the gigantic junior user, that is, Facebook. Among other things, the public has or will assume that Facebook's Timeline is really Timelines, and Timelines will lose the value of its TIMELINES Marks (including its product identity, corporate identity, control over its goodwill and reputation, and ability to move into new markets). Timelines may come to be seen as the infringer, which will harm its reputation and good will.

ANSWER: Denied.

14. Therefore, Timelines seeks injunctive relief enjoining Facebook from using "Timeline," "Timelines," or any confusingly similar derivation thereof, and for monetary relief

and any other relief the Court deems just.

ANSWER: Facebook admits that Timelines seeks the relief described in Paragraph 14, but denies that Timelines is entitled to any such relief.

PARTIES

15. Timelines is a Delaware corporation with its principal place of business in Chicago, Illinois and does business in Illinois under the name Timelines of Illinois, Inc.

ANSWER: Facebook lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 15, and on that basis, denies the same.

16. Facebook is a Delaware corporation with its principal place of business in Palo Alto, California.

ANSWER: Facebook admits that it is a corporation organized under the laws of the State of Delaware with a place of business in Palo Alto, California.

JURISDICTION AND VENUE

17. Facebook has engaged in the transaction of business and committed the acts complained of herein in interstate commerce and within Illinois (and the Northern District of Illinois). Federal question jurisdiction is based upon 15 U.S.C. § 1121 and 28 U.S.C. §§ 1331 and 1338(b). 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 giving rise to the claims in this case took place in this judicial district. Venue is also proper in this district because Facebook is deemed to reside in Illinois pursuant to 28 U.S.C. § 1391(c).

ANSWER: The allegations in Paragraph 17 are legal conclusions to which no response is required. To the extent a response is required, Facebook does not dispute this Court's federal question jurisdiction or that venue is proper in this judicial district.

18. 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, and supplemental jurisdiction over state law claims pursuant to 28 U.S.C. § 1367(a). The activities of Facebook as described herein are sufficient to subject Facebook to the personal jurisdiction of this Court.

ANSWER: The allegations in Paragraph 18 are legal conclusions to which no response is required. To the extent a response is required, Facebook admits that Plaintiff asserts

claims under the Lanham Act and Illinois state law. Facebook does not dispute this Court's subject matter jurisdiction over Plaintiff's federal law claims and/or supplemental jurisdiction over the Illinois state law claims. Facebook also does not dispute this Court's personal jurisdiction over Facebook.

ADDITIONAL FACTUAL ALLEGATIONS

19. 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. Timelines also has a pending application (No. 85,432,026) for "Timelines" for an additional class of services.

ANSWER: Facebook admits that the PTO records list Plaintiff as the current owner of U.S. Trademark Registration Nos. 3,684,074, 3,764,134, and 3,784,720 and U.S. Trademark Application Serial No. 85/432,026. Facebook lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 19, and on that basis, denies the same.

20. Timelines uses the TIMELINES Marks in connection with various goods and services, 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," "managing web sites of others in the fields of historical, current and upcoming events," and providing "computer services [for] . . . creating on-line virtual communities for registered users to organize groups and events, participate in discussions, and engage in social, business and community networking."

ANSWER: Facebook admits that Plaintiff uses the term "timelines" to describe its timeline creation and collection services provided at www.timelines.com. Facebook lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 20, and on that basis, denies the same.

21. 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. A to this Amended Complaint.

ANSWER: Facebook admits that the PTO records list Plaintiff as the current owner of U.S. Trademark Registration Nos. 3,684,074, indicate that the underlying application was filed on May 23, 2008, and identify a registration date of September 15, 2009. Facebook lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 21, and on that basis, denies the same.

22. 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. B to this Amended Complaint.

ANSWER: Facebook admits that the PTO records list Plaintiff as the current owner of U.S. Trademark Registration Nos. 3,764,134, indicate that the underlying application was filed on May 23, 2008, and identify a registration date of March 23, 2010. Facebook lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 22, and on that basis, denies the same.

23. 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. C to this Amended Complaint.

ANSWER: Facebook admits that the PTO records list Plaintiff as the current owner of U.S. Trademark Registration Nos. 3,784,720, indicate that the underlying application was filed on October 5, 2009, and identify a registration date of May 4, 2010. Facebook lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 23, and on that basis, denies the same.

24. Timelines filed for an additional application for the mark “Timelines” on September 26, 2011 for additional services. The first use of the mark for those services was September 15, 2008, and its first use in commerce for those services was April 20, 2009. That application is currently pending. *See* Ex. D to this Amended Complaint.

ANSWER: Facebook admits that the PTO records list Plaintiff as the current owner of U.S. Trademark Application Serial No. 85/432,026 and indicate that the application was filed on

September 26, 2011. Facebook further admits that the PTO records show that the application is still pending, although the PTO issued an office action on November 12, 2011, refusing to register U.S. Serial No. 85/432,026 on the ground that the TIMELINES mark is merely descriptive of Plaintiff's services. Facebook lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 24, and on that basis, denies the same.

25. Pursuant to 15 U.S.C. § 1057(b) and § 1115(a), these federal registrations are "prima facie evidence of the validity of the registered mark and of the registration of the mark, of the registrant's ownership of the mark, and of the registrant's exclusive right to use the mark."

ANSWER: The allegation in Paragraph 25 is a legal conclusion to which no response is required. To the extent a response is required, Facebook admits that the allegation in Paragraph 25 accurately quotes the referenced statutes in part.

26. 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.

ANSWER: Facebook lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 26, and on that basis, denies the same.

27. In 2011, the Timelines.com website has averaged approximately 97,000 visitors per month.

ANSWER: Facebook lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 27, and on that basis, denies the same.

28. 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. Timelines has also launched an iPhone application called "Disaster of the Day," which includes Content from Timelines.com. "Disaster of the Day" is also a federally registered trademark of Timelines, Inc.

ANSWER: Facebook admits that the PTO records currently identify Plaintiff as the owner of a federal trademark registration for the mark "Disaster of the Day." Facebook lacks

knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 28, and on that basis, denies the same.

29. 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.

ANSWER: Facebook lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 29, and on that basis, denies the same.

30. Timelines has invested several million dollars into its business, and has taken swift action to protect its Marks when necessary. 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.

ANSWER: Facebook denies that Plaintiff's purported trademarks are suggestive and/or have acquired secondary meaning. Facebook lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 30, and on that basis, denies the same.

31. As set forth above, on September 22, 2011, Timelines learned that Facebook was promoting its new service known as "Facebook's Timeline" and on September 26, 2011, Timelines learned that Facebook is imminently planning to make that offering available to its more than 750 million users.

ANSWER: Facebook lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 31, and on that basis, denies the same.

32. Facebook has already opened up Facebook's Timeline for a test-run, by allowing over 1.3 million "developers" to access and use the Facebook Timeline service. These "developers" are users of Facebook who essentially signed up early to use Facebook's Timeline. Facebook continues to add tens of thousands of "developers" a day to the number of people using Facebook's Timeline even though Facebook has not actually rolled the product out to all of Facebook's users.

ANSWER: Facebook admits that it has announced, promoted, and marketed to the FACEBOOK community its “timeline” feature, which has been adopted by more than 1.3 million users. Facebook further admits that its “timeline” feature is not currently available to all Facebook users. Facebook denies the remaining allegations in Paragraph 32.

33. By information and belief, Facebook’s plan is that Facebook’s Timeline will be made available to the entire world.

ANSWER: Facebook admits that it intends for the “timeline” feature to be made available to all Facebook users. Facebook denies the remaining allegations in Paragraph 33.

34. Just by the sheer mammoth size of Facebook and its prevalence in people’s lives, when Facebook makes an announcement that it is changing the entire Facebook user experience and replacing it with a product/service called “Timeline,” that announcement gets picked up and, in fact, has been picked up, by major media outlets—in addition to Facebook’s own marketing.

ANSWER: Facebook admits that the announcement of its “timeline” feature was covered by certain media outlets. Facebook denies the remaining allegations in Paragraph 34.

35. It is impossible for a small company, working to build its brand, to compete with the kind of marketing and advertising that Facebook has already put out and will continue to put out regarding Facebook’s Timeline. It is further impossible for a small company working to build its brand to compete with the kind of national attention that Facebook has and will continue to garner.

ANSWER: Denied.

36. Facebook’s use of Timeline as the name of its product/service will almost certainly overwhelm Timelines and cause confusion in the marketplace.

ANSWER: Denied.

37. Just like Timelines, Facebook is using the TIMELINES Marks to provide a web site that gives users the ability to create customized web pages featuring user-defined information about historical, current and upcoming events.

ANSWER: Denied.

38. Just like Timelines, Facebook is using the TIMELINES Marks to provide a service for managing web sites created by others which display historical, current and upcoming events. Given the similarities between the services offered by Facebook and Timelines, the customers targeted by Facebook and Timelines, and the channels of trade of Facebook and

Timelines, Facebook's use of the TIMELINES Marks will result in confusion as to the source, sponsorship, and/or affiliation of the Facebook website and Facebook's goods and services, the source, sponsorship, and/or affiliation of Timelines' website and Timelines' goods and services, and the sponsorship, affiliation, or endorsement as between the companies Timelines and Facebook and their respective products and services.

ANSWER: Denied.

CAUSES OF ACTION

COUNT I – REVERSE TRADEMARK INFRINGEMENT (15 U.S.C. § 1114)

39. Timelines repeats and realleges the allegations set forth in paragraphs 1 through 38.

ANSWER: Facebook hereby incorporates as though fully set forth herein its responses to the allegations in Paragraphs 1-38.

40. Facebook's aforementioned acts constitute federal trademark infringement in violation of Section 32 of the Lanham Act, 15 U.S.C. § 1114. Specifically, for purposes of this Count I, Facebook's acts constitute reverse trademark infringement.

ANSWER: Denied.

41. Timelines possesses the sole and exclusive right to use the "TIMELINES" Marks in connection with the provision and management of customized web pages using user-defined information about people and events, as well as the management of such web pages by virtue of Timelines' United States Trademark Registrations for the TIMELINES word marks and design marks.

ANSWER: Denied.

42. Facebook's wrongful use of the federally registered TIMELINES trademark is likely to cause confusion, mistake, and/or deception and, because of Facebook's ability to overwhelm Timelines in the marketplace, people are likely to believe that Facebook is the rightful owner of the TIMELINES Marks and that, among other results, either Timelines is infringing on Facebook's Marks or that Timelines is somehow affiliated with Facebook even though no such affiliation exists. This is a violation of section 32(a) of the Lanham Act, 15 U.S.C. § 1114.

ANSWER: Denied.

43. Facebook's aforementioned acts have been conducted willfully and intentionally, with deceptive intent, thereby making this an exceptional case under 15 U.S.C. § 1117.

ANSWER: Denied.

44. Facebook's unlawful conduct has caused, and will continue to cause, great, immediate, and irreparable harm to Timelines' business reputation, injury to its goodwill, and pecuniary damages.

ANSWER: Denied.

45. Timelines has no adequate remedy at law.

ANSWER: Denied.

COUNT II – DIRECT TRADEMARK INFRINGEMENT (15 U.S.C. § 1114)

46. Timelines repeats and realleges the allegations set forth in paragraphs 1 through 45.

ANSWER: Facebook hereby incorporates as though fully set forth herein its responses to the allegations in Paragraphs 1-45.

47. Facebook's aforementioned acts constitute federal trademark infringement in violation of Section 32 of the Lanham Act, 15 U.S.C. § 1114.

ANSWER: Denied.

48. Timelines possesses the sole and exclusive right to use the "TIMELINES" Marks in connection with the provision and management of customized web pages using user-defined information about people and events, as well as the management of such web pages by virtue of Timelines' United States Trademark Registrations for the TIMELINES word marks and design marks.

ANSWER: Denied.

49. In addition to overwhelming Timelines' TIMELINES Marks in the Marketplace, Facebook's wrongful use of the federally registered TIMELINES Marks is likely to cause confusion, mistake, and/or deception as to Timelines' sponsorship and/or authorization of Facebook's new "Timeline" product offering – where no such affiliation exists – and it thereby violates section 32(a) of the Lanham Act, 15 U.S.C. § 1114.

ANSWER: Denied.

50. Facebook's aforementioned acts have been conducted willfully and intentionally, with deceptive intent, thereby making this an exceptional case under 15 U.S.C. § 1117.

ANSWER: Denied.

51. Facebook's unlawful conduct has caused, and will continue to cause, great, immediate, and irreparable harm to Timelines' business reputation, injury to its goodwill, and pecuniary damages.

ANSWER: Denied.

52. Timelines has no adequate remedy at law.

ANSWER: Denied.

COUNT III -- FALSE DESIGNATION OF ORIGIN (15 U.S.C. § 1125(A))

53. Timelines repeats and realleges the allegations set forth in paragraphs 1 through 52.

ANSWER: Facebook hereby incorporates as though fully set forth herein its responses to the allegations in Paragraphs 1-52.

54. In addition to its ownership of federal trademark registrations, Timelines possesses the sole and exclusive right to use the “TIMELINES” Marks by virtue of its original and ongoing use of the TIMELINES Marks in connection with the provision and management of customized web pages.

ANSWER: Denied.

55. Facebook’s wrongful use of the TIMELINES Marks is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of Facebook with Timelines, or as to the origin, sponsorship, or approval of both Facebook’s “Timeline” services and commercial activities and Timelines’ goods, services, and commercial activities.

ANSWER: Denied.

56. In addition to improperly suggesting a relationship between Timelines and Facebook – where no such affiliation exists – Facebook’s [sic] wrongful use of the TIMELINES Marks will destroy the source-identifying function and goodwill that Timelines has cultivated in the “TIMELINES” Marks.

ANSWER: Denied.

57. Facebook’s actions violate section 43(a) of the Lanham Act, 15 U.S.C. § 1125.

ANSWER: Denied.

58. Facebook’s aforementioned acts have been conducted willfully and intentionally, with deceptive intent, thereby making this an exceptional case under 15 U.S.C. § 1117.

ANSWER: Denied.

59. Facebook’s unlawful conduct has caused, and will continue to cause, great, immediate, and irreparable harm to Timelines’ business reputation, injury to its goodwill, and pecuniary damages.

ANSWER: Denied.

60. Timelines has no adequate remedy at law.

ANSWER: Denied.

**COUNT IV -- UNFAIR COMPETITION UNDER
THE LANHAM ACT AND COMMON LAW**

61. Timelines repeats and realleges the allegations set forth in paragraphs 1 through 60.

ANSWER: Facebook hereby incorporates as though fully set forth herein its responses to the allegations in Paragraphs 1-60.

62. In addition to its ownership of federal trademark registrations, Timelines possesses the sole and exclusive right to use the “TIMELINES” Marks by virtue of its original and ongoing use of the TIMELINES Marks in connection with the provision and management of customized web pages.

ANSWER: Denied.

63. Facebook’s wrongful use of the TIMELINES Marks for the same or extremely similar goods and services constitutes unfair competition under both federal law and common law.

ANSWER: Denied.

64. Facebook’s actions constituting unfair competition have been taken by Facebook with willful and deceptive intent, thereby making this an exceptional case.

ANSWER: Denied.

65. Facebook’s unlawful conduct has caused, and will continue to cause, great, immediate, and irreparable harm to Timelines’ business reputation, injury to its goodwill, and pecuniary damages.

ANSWER: Denied.

66. Timelines has no adequate remedy at law.

ANSWER: Denied.

COUNT V – ILLINOIS CONSUMER FRAUD AND DECEPTIVE PRACTICES ACT

67. Timelines repeats and realleges the allegations set forth in paragraphs 1 through 66.

ANSWER: Facebook hereby incorporates as though fully set forth herein its responses to the allegations in Paragraphs 1-66.

68. Facebook's unlawful conduct as described above constitutes unfair and deceptive acts and practices, including, but not limited to the use and employment of deception, fraud, false pretense, false promise, misrepresentation, and the concealment, suppression and omission of material facts, with intent that others rely upon the concealment, suppression and omission of such material facts in violation of the Illinois Consumer Fraud and Deceptive Practices Act, 815 ILCS 505/2.

ANSWER: Denied.

69. Facebook's unlawful conduct as described above is willful and intentional, with deceptive intent, making this an exceptional case.

ANSWER: Denied.

70. Facebook's unlawful use of the TIMELINES Marks is likely to deceive consumers to whom Facebook's promotional materials are directed.

ANSWER: Denied.

71. Facebook's unlawful conduct has caused, and will continue to cause, great, immediate, and irreparable harm to Timelines' business reputation, injury to its goodwill, and pecuniary damages.

ANSWER: Denied.

72. Timelines has no adequate remedy at law.

ANSWER: Denied.

COUNT VI – ILLINOIS UNIFORM DECEPTIVE TRADE PRACTICES ACT

73. Timelines repeats and realleges the allegations set forth in paragraphs 1 through 72.

ANSWER: Facebook hereby incorporates as though fully set forth herein its responses to the allegations in Paragraphs 1-72.

74. Facebook's unlawful conduct as described above represents deceptive trade practices in that Facebook is engaging in conduct which creates a likelihood of confusion or misunderstanding in violation of the Illinois Uniform Deceptive Trade Practices Act, 815 ILCS 510/2.

ANSWER: Denied.

75. Facebook's unlawful conduct as described above is willful and intentional, with deceptive intent, making this an exceptional case.

ANSWER: Denied.

76. Facebook's unlawful use of the TIMELINES Marks is likely to deceive consumers to whom Facebook's promotional materials are directed.

ANSWER: Denied.

77. Facebook's unlawful conduct has caused, and will continue to cause, great, immediate, and irreparable harm to Timelines' business reputation, injury to its goodwill, and pecuniary damages.

ANSWER: Denied.

78. Timelines has no adequate remedy at law.

ANSWER: Denied.

AFFIRMATIVE DEFENSES

Facebook asserts the following separate and additional defenses to Plaintiff's First Amended Complaint, without assuming the burden of proof on such defenses that would otherwise fall on Plaintiff. Facebook reserves the right to seek leave to amend these defenses based on its ongoing investigation and discovery into the matters alleged in the First Amended Complaint. Facebook does not knowingly or intentionally waive any applicable defense.

FIRST AFFIRMATIVE DEFENSE (Failure to State a Claim)

1. Plaintiff fails to state in the First Amended Complaint facts sufficient to constitute a cause of action upon which relief may be granted.

SECOND AFFIRMATIVE DEFENSE (Lack of Standing)

2. Plaintiff lacks standing to assert the claims alleged in the First Amended Complaint as Plaintiff does not own any enforceable trademark rights in the term "timelines."

**THIRD AFFIRMATIVE DEFENSE
(Fair Use)**

3. Facebook uses “timeline” to fairly and accurately describe a feature of its new user interface and thus is neither infringing any of Plaintiff’s alleged rights nor committing any related act of unfair competition.

**FOURTH AFFIRMATIVE DEFENSE
(No Damage)**

4. Facebook is informed and believes, and therefore alleges without admitting that the First Amended Complaint states a claim, that Plaintiff has not sustained any loss, damage, harm, or detriment in any amount as a result of any acts alleged against Facebook in the First Amended Complaint.

**FIFTH AFFIRMATIVE DEFENSE
(Lack of Irreparable Harm)**

5. Plaintiff’s claims for injunctive relief are barred because Plaintiff cannot show that it will suffer any irreparable harm from Facebook’s actions. Plaintiff has a complete and adequate remedy at law and thus is not entitled to seek equitable relief because the alleged injury or damage suffered by Plaintiff, if any, would be compensated by damages.

**SIXTH AFFIRMATIVE DEFENSE
(Failure to Mitigate)**

6. Plaintiff’s claims made in the First Amended Complaint are barred, in whole or in part, because of a failure to mitigate damages, if such damages exist.

**SEVENTH AFFIRMATIVE DEFENSE
(Duplicative Claims)**

7. Without admitting that the First Amended Complaint states a claim, any remedies are limited to the extent Plaintiff seeks overlapping and duplicative recovery based on various claims against Facebook for any alleged single wrong.

PRAYER FOR RELIEF ON PLAINTIFF'S FIRST AMENDED COMPLAINT

WHEREFORE, Facebook prays for relief and judgment as follows:

- a. That the Court deny Plaintiff's prayer for relief in its entirety and that the Court dismiss the First Amended Complaint with prejudice and enter judgment in Facebook's favor;
- b. That the Court award Facebook its costs and expenses incurred in this action and attorneys' fees as permitted by law; and
- c. That the Court award Facebook such other and further relief that it deems appropriate.

COUNTERCLAIMS

Facebook asserts each of the following counterclaims against Timelines, Inc. (“Counterdefendant”).

PARTIES

1. Facebook is a corporation organized and existing under the laws of the State of Delaware, with a place of business in Palo Alto, California.

2. On information and belief, Counterdefendant is a corporation organized under the laws of the State of Delaware, with its principal place of business in Chicago, Illinois.

JURISDICTION AND VENUE

3. These Counterclaims arise under, respectively, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the Lanham Act, 15 U.S.C. § 1051 *et seq.*

4. This Court has jurisdiction over the subject matter of these Counterclaims under 15 U.S.C. § 1121 and 28 U.S.C. §§ 1331, 1338, and 2201.

5. On information and belief, this Court has personal jurisdiction over Counterdefendant because, among other reasons, Counterdefendant’s principal place of business is in this judicial district. Further, by filing its Complaint and First Amended Complaint in this judicial district, Counterdefendant has submitted to this Court’s personal jurisdiction over Counterdefendant.

6. On information and belief, venue is proper in this judicial district pursuant to 28 U.S.C. §1391 because, among other reasons, Counterdefendant’s principal place of business is in this judicial district. Further, by filing its Complaint and First Amended Complaint, Counterdefendant has consented that this Court is a proper venue for this litigation.

FACTUAL BACKGROUND

MEANING AND WIDESPREAD USE OF “TIMELINES”

7. Despite an abundance of prior and senior users of the noun “timeline,” Counterdefendant filed this lawsuit in an attempt to appropriate for its exclusive use that common English word under the guise of trademark protection. The noun “timeline” refers to a chronological organization of events or other information. As such, “timeline” readily conveys to a consumer that any product or service associated with the term will take the form of, or enable the consumer to create, a chronological listing of facts, communications, or other information.

8. On information and belief, long before Counterdefendant’s existence and its alleged first use of “timelines” in commerce on April 20, 2009, third parties have used the term “timeline” to describe or identify goods and services that enable users to create and share chronologies of events in their personal lives, in history, or any other subject matter of their choosing.

9. A recent Google search of the term “timeline” returned over 196 million hits, including thousands of image results depicting various types of timelines.

10. For example, on information and belief, since 2007, Underlying, Inc. has publicly offered a “free digital timeline website” located at www.dipity.com, which allows users to select a “Create a Timeline” tab to “create, share, embed and collaborate on interactive, visually engaging timelines that integrate video, audio, images, text, links, social media, location, and timestamps.” The Dipity website also offers a Facebook application that allows users to “easily connect” and “import content to [their] free timeline,” providing the same overall functionality as Facebook’s own timeline feature, which is the subject of this lawsuit.

11. In addition, on information and belief, Famento, Inc. launched an “Xtimeline” service in 2007 that allows users to create, share, and access timelines on any subject including personal activities and historical events, among many other categories. The website at www.xtimeline.com prominently displays the following:



Moreover, Famento uses “timeline” descriptively, as noted above and throughout its website, to refer to services which are essentially identical to those offered by Counterdefendant.

12. Further, on information and belief, since early 2008, Timetoast has offered users the ability on its website at www.timetoast.com to “create timelines” and “share them on the web.” Users can browse timelines by selecting links from prominently titled categories, such as “Popular timelines,” “Latest timelines,” or “Updated timelines.” Upon information and belief, the site is used to create timelines of historical events, hobbies, and personal activities, among other subject areas.

13. On information and belief, since 2000, the website at www.ourtimelines.com has also provided users with the ability to generate personal timelines. According to the site, users can generate “as many timelines as [they] like,” and examples are provided under the heading “Personalized timelines.” Users can also select the “Timeline” tab on the left side of the webpage to create timelines of their own.

14. On information and belief, Twitter also has made longstanding use of the “timeline” term. Twitter users logging into the site can go directly to a “Timeline” tab, the first tab on their home page, in order to review postings by other users chronologically. Timelines are also found on Twitter when a user curates or reviews a list or runs a search.

15. On information and belief, millions of U.S. consumers have visited these websites and used their timeline creating and collecting services. Twitter alone claims an active user base of well over 100 million, and many of the sites discussed above generate web traffic in the United States well in excess of Counterdefendant. On information and belief, all of these third party uses of “timeline” or “timelines” predate Counterdefendant’s first use of “timelines”.

16. The examples provided above are a mere sampling of the numerous third parties using the terms “timeline” or “timelines” to describe or identify offerings that are substantially similar, if not identical, to those provided by Counterdefendant, many of which predate Counterdefendant’s claimed first use date of April 20, 2009.



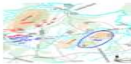

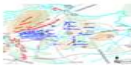
17. Such prior third party uses demonstrate that the term “timeline” is merely descriptive, or even generic, for services such as those provided by Counterdefendant.

18. Given the generic or at least merely descriptive nature of the term “timeline” when used to identify chronologies of events and related information (or tools for their creation), as well as the prior and widespread use of the term by third parties, Counterdefendant does not own exclusive rights in the term “timelines” as used in connection with timeline creation and collection services.

COUNTERDEFENDANT’S USE OF THE TERM “TIMELINES” TO DESCRIBE ITS SERVICES

19. On information and belief, Counterdefendant operates the website located at www.timelines.com.

20. Counterdefendant's website has featured timelines organized by topic, such as the following:

Battle Of Bull Run Timeline		
1861	"Blind Tom" Wiggins composes "The Battle of Manassas" Battle of Manassas was written by Thomas Wiggins (aka "Blind Tom") at the age of 12. It is a programmatic work which describes the first major battle of the Civil War. As with many of his...	
1861 Jul 21	First Battle of Bull Run Other Names: First Bull Run Location: Fairfax County and Prince William County Campaign: Manassas Campaign (July 1861) Date(s): July 21, 1861 Principal Commanders: Brig. Gen. ...	
1862 Aug 28	Second Battle of Bull Run - Brawner's Farm (Day 1) "Our men on the left loaded and fired with the energy of madmen, and the 6th worked with equal desperation. This stopped the rush of the enemy and they halted and fired upon us their dead..." —Maj. Rufus R. Dawes, 6th Wisconsin	
1862 Aug 29	Second Battle of Bull Run - Jackson Defends Stony Ridge (Day 2) Jackson had initiated the battle at Brawner's farm with the intent of holding Pope until Longstreet arrived with the remainder of the Army of Northern Virginia. Longstreet's 25,000 men be...	
1862 Aug 30	Second Battle of Bull Run - Longstreet Counterattack & Union Retreat (Day 3) "A splendid army almost demoralized, millions of public property given up or destroyed, thousands of lives of our best men sacrificed for no purpose. I dare not trust myself to speak of th..." —Brig. Gen. Alpheus S. Williams (II Corps division commander)	

21. On information and belief, users of Counterdefendant's website can open accounts and begin recording events to any timeline that already exists or they can create a new timeline.

22. Counterdefendant has routinely emphasized the chronological aspects of its timeline creation and collection services. For example, Counterdefendant has specifically described its website as "a site where people and entities can discover and record events, and then share and connect them with other events. It's . . . a place . . . to discover what happened where and when."

23. On the FAQ page found on its website, Counterdefendant has stated that its services allow users to "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." In a recent version of the FAQ page, Counterdefendant further explained that:

We launched Timelines with the belief that regular people, not just designated "historians" – whoever these people are – should be able to record and piece together history easily – local history, recent history, ancient history, world history, business history... any history. What's unique about our [sic] site is how it is structured – Timelines.com enables people to understand how events relate to each other in time, place and topic.

24. Recent versions of Counterdefendant’s website have contained several generic or descriptive uses of the term “timelines”, including but not limited to the following:

- The link “Popular Timelines” led to Plaintiff’s most popular chronologies;
- Descriptive references to specific timelines and categories of timelines such as “American History Timelines”; and
- Counterdefendant’s blog used “timelines” descriptively, as in “Our Civil Rights Movement Timeline provides a great overview of the struggle and progress of the movement.”

25. Shortly after Counterdefendant filed its original Complaint and this Court denied its motion for a temporary restraining order, Counterdefendant engaged in a significant overhaul of its website in an attempt to mask its generic and descriptive uses of the term “timelines” to describe its services – a transparent litigation tactic that constitutes an acknowledgement by Counterdefendant that the term is generic or merely descriptive.

COUNTERDEFENDANT’S EFFORTS TO REGISTER TERM “TIMELINES” AS A TRADEMARK

26. Despite the generic or descriptive nature of the term “timelines” when used in connection with Counterdefendant’s services, on information and belief, Counterdefendant obtained three U.S. trademark registrations for marks incorporating the term – U.S. Registration No. 3,684,074 for TIMELINES; U.S. Registration No. 3,764,134 for TIMELINES.COM; and U.S. Registration No. 3,784,720 for TIMELINES (stylized) (collectively, the “TIMELINES Registrations”).

27. The TIMELINES Registrations each identify the following services: “Providing a web site that gives users the ability to create customized web pages featuring user-defined information about historical, current and upcoming events; and application service provider, namely, managing web sites of others in the fields of historical, current and upcoming events” in Class 42.

28. The TIMELINES Registrations have each been registered for less than five years and thus may be cancelled if the Court finds that the term “timelines” is either generic or merely descriptive of the services identified in the registrations.

29. On information and belief, Counterdefendant filed an application on September 26, 2011, four days after it claims to have learned of Facebook’s new “timeline” user interface feature, to register the TIMELINES mark in connection with a variety of Class 42 services, including “computer services, namely, providing online services featuring genealogical information, images, records and other data relating to historical, current and future life events” (the “TIMELINES Application”).

30. On November 12, 2011, the PTO issued an office action refusing to register the TIMELINES Application on the ground that the term “timelines” merely describes a feature, characteristic and function of Counterdefendant’s services.

31. The PTO Examining Attorney based the refusal of the TIMELINES Application in large part on evidence demonstrating that “the term ‘timeline’ refers to interactive, often web-based, visual chronologies” and that “[w]ords or terms that describe the function or purpose of a product or service may be merely descriptive or generic.” The Examining Attorney supported the refusal with evidence of additional third party uses of the term “timelines” to describe various types and uses of chronologies, including:

- An interactive timeline created using TikiToki timeline software offered at www.tiki-toki.com;
- Timelines created using the “Timeline Maker Professional” offered at www.timelinemaker.com;
- Software used to create timelines at www.timelinesoftware.com, which states: “Generally, a timeline shows a sequence of events or projects over a period of time”;
- A timeline described as a “Web Widget for Visualizing Temporal Data” offered at www.simile-widgets.org/timeline/;

- “Easy Timeline Software” available as a free download at www.smartdraw.com/specials/timelines.asp;
- A web-based timeline software for “creating and sharing history and project planning” at www.timeglider.com;
- A timeline interactive teaching tool offered to students by the International Reading Association (www.readwritethink.org/classroom-resources/student-interactives/timeline-300007);
- An interactive timeline tool allowing users to “travel through time” of Google’s company history (see www.google.com/corporate/timeline/#start); and
- Web-based tools made available by the Massachusetts Institute of Technology to create “Timeline and Map Timedata” (see www.demoscience.org/resources/category/28).

32. In the office action, the PTO Examining Attorney explained that descriptive marks like “timelines” are not afforded protection in order “(1) to prevent the owner of a descriptive mark from inhibiting competition in the marketplace and (2) to avoid the possibility of costly infringement suits brought by the trademark or service mark owner.”

LAUNCH OF THE “TIMELINE” FEATURE BY FACEBOOK

33. Facebook is a preeminent provider of online networking services and is dedicated to helping people connect and share information. Facebook’s website at www.facebook.com allows its users to create individual “profiles,” where they can post personal information about themselves in the form of pictures, text, links, video, audio and other digital media. User profiles include a display of the user’s activity on Facebook in reverse chronological order.

34. Facebook recently announced and began rolling out an update to Facebook user profiles, which enables users to record, display and share the most memorable events in their lives along a graphed chronological timeline. Facebook fairly and accurately describes this user interface as a “timeline.” An example of a Facebook timeline, and a video explanation, can be found at <http://www.facebook.com/about/timeline>.

35. Facebook publicly announced and launched the timeline feature on September 22,

2011, at Facebook's annual "f8" developer conference, and via live internet stream and blog posts.

CAUSES OF ACTION

FIRST CAUSE OF ACTION DECLARATION OF NON-INFRINGEMENT

36. Facebook realleges and incorporates herein by reference its allegations in Paragraphs 1-35 of its Counterclaims.

37. An actual case or controversy exists between Facebook and Counterdefendant as to whether Facebook's use of the term "timeline" infringes Counterdefendant's alleged rights in the term "timelines" or otherwise constitutes any act of unfair competition under the Lanham Act, Illinois statutory law, or common law.

38. The term "timelines" as used by Counterdefendant in connection with its timeline creation and collection services is generic or at the very least merely descriptive (and lacking any acquired secondary meaning); therefore, the term does not function as a trademark and Counterdefendant does not own exclusive rights in the term.

39. To the extent Counterdefendant is found to have any rights in the term "timelines," there is no likelihood of confusion between the parties' respective uses of the term because of, among other reasons: (a) the exceptionally weak nature of Counterdefendant's alleged mark; (b) differences in the parties' respective services; and (c) the prominent use of the famous FACEBOOK house mark to identify the source of Facebook's services.

40. Further, Facebook uses "timeline" to fairly and accurately describe a feature of its new user interface and thus is neither infringing any of Counterdefendant's alleged rights nor committing any related act of unfair competition.

41. A judicial declaration that Facebook neither has infringed Counterdefendant's

alleged rights in “timelines” nor committed any related act of unfair competition under the Lanham Act, Illinois statutory law, or common law is necessary and appropriate so that Facebook may continue to fairly use the term “timeline” to describe a feature of its new user interface.

**SECOND CAUSE OF ACTION
CANCELLATION OF U.S. REGISTRATION NOS. 3,684,074, 3,764,134, AND 3,784,720 AND
EXPRESS ABANDONMENT OF U.S. SERIAL NO. 85/432,026**

42. Facebook realleges and incorporates herein by reference its allegations in Paragraphs 1-41 of its Counterclaims.

43. Counterdefendant relies on its alleged ownership of its TIMELINES Registrations (U.S. Registration Nos. 3,684,074, 3,764,134, and 3,784,720) and TIMELINES Application (Serial No. 85/432,026) as evidence of the distinctiveness of the term “timelines.”

44. Facebook will be harmed by the continued registration of the TIMELINES Registrations, the registration of the TIMELINES Application, and any other attempts by Counterdefendant to obtain registrations for “timelines.”

45. The term “timelines” as used by Counterdefendant does not function as a trademark because it is a generic term for, or at the very least merely descriptive of (*i.e.*, descriptive without any acquired secondary meaning), the timeline creation and collection services offered by Counterdefendant; therefore, Counterdefendant does not own exclusive rights to the term.

46. Pursuant to 15 U.S.C. § 1064, the Court should order the cancellation of the TIMELINES Registrations. Further, the Court should order Counterdefendant to expressly abandon its pending TIMELINES Application and enjoin Counterdefendant from seeking the registration of any mark incorporating the term “timelines” as used in connection with

Counterdefendant's timeline creation and collection services in the future.

PRAYER FOR RELIEF ON COUNTERCLAIMS

WHEREFORE, Facebook requests that judgment be entered in its favor and against Counterdefendant as follows:

- a. A judgment in favor of Facebook on all Counterclaims;
- b. A declaration that Facebook's use of the term "timeline" does not infringe any rights owned by Counterdefendant in the term and that Facebook has not committed any related act of unfair competition under the Lanham Act, Illinois statutory law, or common law;
- c. That the Court order the cancellation of U.S. Registration Nos. 3,684,074, 3,764,134, and 3,784,720 and the express abandonment of Serial No. 85/432,026;
- d. That the Court enjoin Counterdefendant from attempting to register any mark incorporating "timeline" or "timelines" in the future in connection with its timeline creation and collection services;
- e. That the Court award Facebook its costs and expenses incurred in this action and attorneys' fees as permitted by law; and
- f. That the Court award Facebook such other and further relief that it deems appropriate.

JURY DEMAND

A trial by jury is hereby demanded by Facebook on all issues related to its Counterclaims that are triable to a jury.

Dated: December 6, 2011

/s/ Jeffrey T. Norberg

Michael G. Rhodes (*pro hac vice*)

Peter J. Willsey (*pro hac vice*)

Anne H. Peck (*pro hac vice*)

Jeffrey T. Norberg (*pro hac vice*)

COOLEY LLP

101 California Street, 5th Floor

San Francisco, CA 94111-5800

Phone: (415) 693-2000

Fax: (415) 693-2222

Email: rhodesmg@cooley.com

pwillsey@cooley.com

peckah@cooley.com

jnorberg@cooley.com

Steven D. McCormick (IL Bar No. 1824260)

Thomas M. Monagan, III (IL Bar No. 6278060)

Jordan M. Heinz (IL Bar No. 6286377)

KIRKLAND & ELLIS LLP

300 North LaSalle

Chicago, IL 60654-3406

Tel: (312) 862-2000

Fax: (312) 862-2200

Email: smccormick@kirkland.com

tmonagan@kirkland.com

jheinz@kirkland.com

*Attorneys for Defendant-Counterplaintiff
FACEBOOK, INC.*

CERTIFICATE OF SERVICE

I, Jeffrey T. Norberg, counsel for Defendant-Counterplaintiff Facebook, Inc., hereby certify that, on December 6, 2011, I served a true and correct copy of **FACEBOOK, INC.'S ANSWER TO PLAINTIFF'S FIRST AMENDED COMPLAINT AND COUNTERCLAIMS AGAINST PLAINTIFF** upon counsel for Plaintiff by electronically filing the same in the CM/ECF system, which automatically transmitted a Notice of Electronic Filing to all ECF registrants.

Dated: December 6, 2011

/s/ Jeffrey T. Norberg
Jeffrey T. Norberg (*pro hac vice*)
COOLEY LLP
3175 Hanover Street
Palo Alto, CA 94111
Phone: (650) 843-5000
Fax: (650) 857-0663
Email: jnorberg@cooley.com

*Attorney for Defendant-Counterplaintiff
FACEBOOK, INC.*

147729/DC