

**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

**TIMELINES, INC.’S ANSWER TO FACEBOOK, INC.’S COUNTERCLAIMS AGAINST  
TIMELINES**

Plaintiff and Counterclaim-Defendant Timelines, Inc. (“Timelines”), by and through its counsel, hereby answers the Counterclaims of Defendant Facebook, Inc. (“Facebook”).

**ANSWER TO COUNTERCLAIMS**

**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.

**ANSWER:** Admitted.

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.

**ANSWER:** Admitted.

**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.

**ANSWER:** Timelines admits that Facebook asserts counterclaims under such acts and does not dispute this court’s subject matter jurisdiction, personal jurisdiction over Timelines, or that this court is a proper venue for the Counterclaims.

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.

**ANSWER:** Timelines does not dispute this Court's subject matter jurisdiction, personal jurisdiction over Timelines, or that this Court is a proper venue for the Counterclaims.

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.

**ANSWER:** Timelines does not dispute this Court's subject matter jurisdiction, personal jurisdiction over Timelines, or that this Court is a proper venue for the Counterclaims.

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.

**ANSWER:** Timelines does not dispute this Court's subject matter jurisdiction, personal jurisdiction over Timelines, or that this Court is a proper venue for the Counterclaims.

## **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.

**ANSWER:** Denied.

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.

**ANSWER:** Denied.

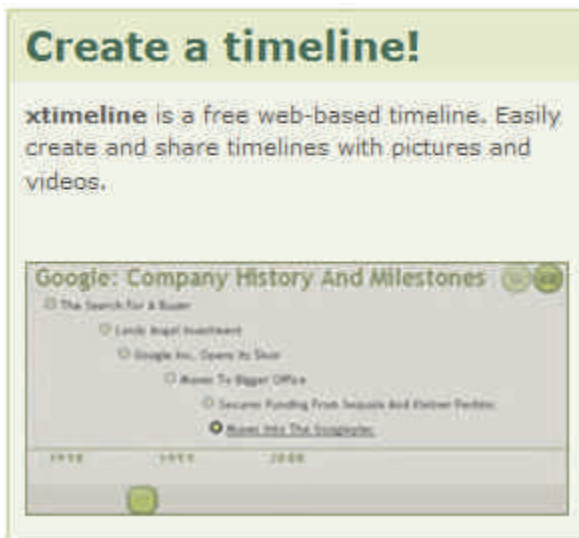
9. A recent Google search of the term “timeline” returned over 196 million hits, including thousands of image results depicting various types of timelines.

**ANSWER:** Timelines lacks knowledge or information sufficient to form a belief as to the truth of this allegation, and on that basis, denies the same.

10. For example, on information and belief, since 2007, Underlying, Inc. has publicly offered a “free digital timeline website” located at [www.dipity.com](http://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.

**ANSWER:** Timelines lacks knowledge or information sufficient to form a belief as to the truth of this allegation, and on that basis, denies the same. Timelines further denies any implication that the actions of a specific third-party not a party to this lawsuit affects Timelines rights in the TIMELINES trademark.

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](http://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.

**ANSWER:** Timelines lacks knowledge or information sufficient to form a belief as to the truth of this allegation, and on that basis, denies the same. Timelines further denies any implication that the actions of a specific third-party not a party to this lawsuit affects Timelines rights in the TIMELINES trademark.

12. Further, on information and belief, since early 2008, Timetoast has offered users the ability on its website at [www.timetoast.com](http://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.

**ANSWER:** Timelines lacks knowledge or information sufficient to form a belief as to the truth of this allegation, and on that basis, denies the same. Timelines further denies any implication that the actions of a specific third-party not a party to this lawsuit affects Timelines rights in the TIMELINES trademark.

13. On information and belief, since 2000, the website at [www.ourtimelines.com](http://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.

**ANSWER:** Timelines lacks knowledge or information sufficient to form a belief as to the truth of this allegation, and on that basis, denies the same. Timelines further denies any implication that the actions of a specific third-party not a party to this lawsuit affects Timelines rights in the TIMELINES trademark.

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.

**ANSWER:** Timelines lacks knowledge or information sufficient to form a belief as to the truth of this allegation, and on that basis, denies the same. Timelines further denies any implication that the actions of a specific third-party not a party to this lawsuit affects Timelines rights in the TIMELINES trademark.

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”.

**ANSWER:** Timelines lacks knowledge or information sufficient to form a belief as to the truth of this allegation, and on that basis, denies the same. Timelines further denies any implication that the actions of a specific third-party not a party to this lawsuit affects Timelines rights in the TIMELINES trademark. Finally, this paragraph is further denied to the extent this paragraph implies that third parties have used the TIMELINES mark to identify the same goods and services offered by 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.

**ANSWER:** Denied. Timelines further denies any implication that the actions of a specific third-party not a party to this lawsuit affects Timelines rights in the TIMELINES trademark. Finally, this paragraph is further denied to the extent this paragraph implies that third parties have used the TIMELINES mark to identify the same goods and services offered by Timelines.

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.

**ANSWER:** Denied. Timelines further denies any implication that the actions of a specific third-party not a party to this lawsuit affects Timelines rights in the TIMELINES trademark. Finally, this paragraph is further denied to the extent this paragraph implies that third parties have used the TIMELINES mark to identify the same goods and services offered by Timelines.

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.

**ANSWER:** Denied. Timelines further denies any implication that the actions of a specific third-party not a party to this lawsuit affects Timelines rights in the TIMELINES trademark. Finally, this paragraph is further denied to the extent this paragraph implies that third parties have used the TIMELINES mark to identify the same goods and services offered by Timelines.

### 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.

**ANSWER:** Admitted.

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

**Battle Of Bull Run Timeline**

1861	<b>"Blind Tom" Wiggins composes "The Battle of Manassas"</b> 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	<b>First Battle of Bull Run</b> 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	<b>Second Battle of Bull Run - Brawner's Farm (Day 1)</b> "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	<b>Second Battle of Bull Run - Jackson Defends Stony Ridge (Day 2)</b> 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	<b>Second Battle of Bull Run - Longstreet Counterattack &amp; Union Retreat (Day 3)</b> "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)	

**ANSWER:** Admitted as to the existence of the image. Denied as to Facebook’s use of the word “timelines” in a generic sense in its allegation in this paragraph. TIMELINES is the trademark that Timelines, Inc. uses to identify its goods and services.

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.

**ANSWER:** Admitted as to the ability of Timelines’ users’ ability to open accounts and record events. Denied as to Facebook’s use of the word “timelines” in a generic sense in its allegation in this Paragraph. TIMELINES is the trademark that Timelines, Inc. uses to identify its goods and services.

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.”

**ANSWER:** Admitted as to the use of the quotation in this paragraph by Timelines. Denied otherwise, including as to Facebook’s use of the word “timelines” in a generic sense in its allegation in this Paragraph. TIMELINES is the trademark that Timelines, Inc. uses to identify its goods and services.

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.

**ANSWER:** Admitted as to the use of the quotation in this paragraph by Timelines. Denied otherwise, including as to Facebook’s use of the word “timelines” in a generic sense in



its allegation in this Paragraph. TIMELINES is the trademark that Timelines, Inc. uses to identify its goods and services.

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.”

**ANSWER:** Denied.

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.

**ANSWER:** Denied.

#### **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”).

**ANSWER :** Admitted that Timelines has received three separate trademark registrations from the United States Patent and Trademark Office that deemed the mark TIMELINES as not generic or even descriptive for the goods and services listed in Timelines’ trademark applications. Denied as to the characterization of the TIMELINES marks as generic or descriptive.

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.

**ANSWER:** Admitted.

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.

**ANSWER:** Timelines admits only that the registration was granted fewer than five years ago and that marks may be cancelled *if they are conclusively found to be generic by a court of law*. Denied as to the rest of the paragraph and the implications within.

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”).

**ANSWER:** Admitted.

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.

**ANSWER:** Admitted that there was a *preliminary* PTO Office Action preliminarily denying the newest TIMELINES Application. Denied as to the specific grounds on which the PTO preliminarily denied the application.

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](http://www.tiki-toki.com);
- Timelines created using the “Timeline Maker Professional” offered at [www.timelinemaker.com](http://www.timelinemaker.com);
- Software used to created timelines at [www.timelinesoftware.com](http://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/](http://www.simile-widgets.org/timeline/);
- “Easy Timeline Software” available as a free download at [www.smartdraw.com/specials/timelines.asp](http://www.smartdraw.com/specials/timelines.asp);
- A web-based timeline software for “creating and sharing history and project planning” at [www.timeglider.com](http://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](http://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](http://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](http://www.demoscience.org/resources/category/28)).

**ANSWER:** Admitted that there was a *preliminary* PTO Office Action preliminarily denying the newest TIMELINES Application and that the specific quotes in this Counterclaim paragraph were in the Office Action. Denied as to the specific grounds or basis on which the PTO preliminarily denied the application, Facebook’s categorization of the PTO Office Action, Facebook’s statements or implications of any legal conclusions made in the PTO Office Action, or that any individual quoted material above specifically contributed or was the basis of the PTO Office Action or the preliminary denial of the newest—and only the newest—trademark application.

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.”

**ANSWER:** Admitted that there was a *preliminary* PTO Office Action preliminarily denying the newest TIMELINES Application and that the specific quotes in this Counterclaim paragraph were in the Office Action. Denied that the PTO specifically found or held as a final action that Timelines was a generic or descriptive mark. Also denied as to the specific grounds or basis on which the PTO preliminarily denied the application, Facebook’s categorization of the PTO Office Action, Facebook’s statements or implications of any legal conclusions made in the PTO Office Action, or that any individual quoted material above specifically contributed or was the basis of the PTO Office Action or the preliminary denial of the newest—and only the newest—trademark application.

## **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](http://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.

**ANSWER:** Timelines lacks knowledge or information sufficient to form a belief as to the truth of this allegation, and on that basis, denies the same.

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>.

**ANSWER:** Timelines lacks knowledge or information sufficient to form a belief as to the truth of this allegation, and on that basis, denies the same. Timelines further denies that Facebook fairly and accurately describes what it does as a “timeline,” especially in the generic way implied in this paragraph.

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.

**ANSWER:** Admitted as to the dates and place of the announcement. Denied as to the implication that timeline is merely as a generic feature since Facebook used the mark TIMELINES in a clear trademark-way in this announcement and since.

## **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.

**ANSWER:** Timelines hereby incorporates as though fully set forth herein its responses to the allegations in Paragraphs 1-35.

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.

**ANSWER:** Admitted.

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.

**ANSWER:** Denied.

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.

**ANSWER:** Denied.

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.

**ANSWER:** Denied.

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.

**ANSWER:** Denied.

## **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.

**ANSWER:** Timelines hereby incorporates as though fully set forth herein its responses to the allegations in Paragraphs 1-41.

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.”

**ANSWER:** Admitted in part. Among other things, Timelines also relies on its long-standing use of the marks, the public’s identification of Timelines with the TIMELINES marks and the goods and services associated with those marks, and the natural strength of those marks as an identifier, and to the extent that this paragraph is intended to allege that Timelines does not rely on these other matters, then such allegations are denied.

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.”

**ANSWER:** Denied.

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.

**ANSWER:** Denied.

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.

**ANSWER:** Denied.

### **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.

**ANSWER:** These requests for relief do not require an answer. To the extent any answer is required, Timelines denies that any such relief is appropriate.

### **AFFIRMATIVE DEFENSES**

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

#### **FIRST AFFIRMATIVE DEFENSE (Unclean Hands)**

1. With full knowledge of Timelines’ registered trademarks—as admitted in Facebook’s Answer to the First Amended Complaint—Facebook went forward with a massive launch of a product using the term TIMELINE in a trademark-way. Facebook did not attempt to contact Timelines in any way or avoid infringement of the TIMELINES marks. Facebook has operated in bad faith and cannot bring its counterclaims due to its unclean hands.

**SECOND AFFIRMATIVE DEFENSE  
(No Damage)**

2. Timelines is informed and believes, and therefore alleges without admitting that the Counterclaims state a claim, that as Timeline's Complaint was brought before Facebook even officially launched their product, Facebook could have changed its mark away from TIMELINES and as such, will sustain no loss, damage, harm, or detriment in any amount as a result of the existence of the TIMELINES marks.

**THIRD AFFIRMATIVE DEFENSE  
(Failure to Mitigate Damage)**

3. Timelines is informed and believes, and therefore alleges without admitting that the Counterclaims state a claim, that as Timeline's Complaint was brought before Facebook even officially launched their product, Facebook could have changed its mark away from TIMELINES and as such, any loss, damage, harm, or detriment in any amount as a result of the existence of the TIMELINES marks has been caused by Facebook's actions alone.

**PRAYER FOR RELIEF ON FACEBOOK'S COUNTERCLAIMS**

WHEREFORE, Timelines prays for relief and judgment as follows:

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



**JURY DEMAND**

A trial by jury is hereby demanded by Timelines on all issues related to both the First Amended Complaint as well as Facebook's Counterclaims that are triable to a jury.

Dated: December 27, 2011

By: /s/ Douglas A. Albritton  
One of its Attorneys

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*Attorneys for Plaintiff and Counterclaim-Defendant  
TIMELINES, INC.*

**CERTIFICATE OF SERVICE**

The undersigned, an attorney, hereby certifies that, on December 27, 2011, he caused a true and correct copy of TIMELINES, INC.'S ANSWER TO FACEBOOK, INC.'S COUNTERCLAIMS AGAINST TIMELINES to be served upon counsel for Facebook, Inc. by electronically filing the same in the CM/ECF system, which automatically transmitted a Notice of Electronic Filing to all ECF registrants.

Dated: December 27, 2011

By: /s/ Douglas A. Albritton  
An Attorney