

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

TIMELINES, INC.,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No.: 11 CV 6867
)	
FACEBOOK, INC.,)	Jury Trial Demanded
)	
Defendant.)	

**PLAINTIFF TIMELINES, INC.’S MEMORANDUM OF LAW
IN SUPPORT OF ITS MOTION FOR
NARROW RELIEF FROM THE PROTECTIVE ORDER**

Plaintiff/Counter-Defendant Timelines, Inc. (“Timelines”) submits this Memorandum of Law in support of its Motion for Narrow Relief from the Protective Order.

BACKGROUND

This is a trademark lawsuit based upon Defendant’s infringing use of Plaintiff Timelines’ three federally registered trademarks for the term “Timelines” and a protected design mark. Timelines seeks relief pursuant to the Lanham Act (Counts I, II, III and IV), common law (Count IV), the Illinois Consumer Fraud and Deceptive Practices Act (Count V), and the Illinois Uniform Deceptive Trade Practices Act (Count VI). Among the damages that Timelines seeks are the profits that Facebook has earned through its improper actions with respect to, and use of, Timelines’ trademarks. *See, e.g.*, 15 U.S.C. § 1117(a).

At the inception of the case, the Parties submitted a proposed order which the Court entered as a Protective Order on April 24, 2012. *See* Docket Entry No. 55. Pursuant to the Protective Order, a party can designate produced documents as “Confidential,” or “Highly Confidential – Outside Counsel Only.” *See* Protective Order ¶ 5. For this latter, Highly-

Confidential category, the document must include non-public information that constitutes, contains, or reflects trade secrets; proprietary business information, methods or processes; financial data, reports or analysis; pricing or cost information; sales and marketing information, analysis, or planning; customer or candidate information; and other confidential information that is competitively sensitive. *Id.*

In discovery, Timelines served document requests on Facebook seeking its profits from its “Timeline” product, and in response Facebook produced, among other things, documents Bates stamped FB-TL 0011912 – 11919 (hereafter “Facebook Revenue Documents”). Facebook designated these documents as Highly Confidential – Outside Counsel Only, and so Timelines has not attached a copy of the documents hereto. As needed, Timelines can bring a copy to the Court for review, or submit to chambers *in camera*. Facebook does not charge its users to utilize its Timeline product, but, instead, generates revenue by selling advertising that is displayed on users’ Facebook pages. The Facebook Revenue Documents show certain revenue that is at issue in this case (revenue that arises from Facebook’s improper use of Timelines’ trademarks). Timelines will be asking Facebook to supplement these figures for the 4th quarter of 2012 and, also, for the time before trial.

Facebook agreed that Timelines could share the Facebook Revenue Documents with Timelines’ damages expert and, so, Timelines provided those documents to its damages expert, David Haas, who relied upon them in preparing his damages report (and also in preparing his report responding to Facebook’s rebuttal). Facebook, of course, relied upon the documents for its expert’s rebuttal of Mr. Haas’ opening report. So, even though Timelines’ expert can see these materials, Facebook has objected to Mr. Hand seeing them.

Because Facebook has designated the Facebook Revenue Documents as Highly Confidential – Outside Counsel Only, Timelines’ outside counsel has not shared these documents with its client contact, Timelines’ President Mr. Brian Hand. As a result, Mr. Hand also has not reviewed Timelines’ damages report from Mr. Haas (or his response to Facebook’s rebuttal). Thus, Mr. Hand does not know the damages set forth in Mr. Haas’ report. Timelines brings this motion to permit Mr. Hand to see this information, including the damages reports from both parties, because his knowledge of the same is critical to his ability to continue overseeing this case and participating in the trial. Moreover, if the Court were to ask Mr. Hand about settlement right now, he would not have knowledge of what to demand – an information gap that due process does not warrant. We also believe that this information may already be public, or may soon become public, because Facebook is a publicly traded corporation with substantial disclosure obligations. If Facebook continues to oppose this motion, it should explain how this information is not already public, or will not become public, in future SEC filings or public press releases.

ARGUMENT

Under Rule 26(c) of the Federal Rules of Civil Procedure, the district court has the power to issue a protective order only upon a showing of “good cause.” *Jepson, Inc. v. Makita Elec. Works, Ltd.*, 30 F.3d 854, 858 (7th Cir. 1994). In deciding whether good cause exists, a district court must balance the harm to the party seeking the protective order against the importance of disclosure to the public. *Doe v. Marsalis*, 202 F.R.D. 233, 237 (N.D. Ill. 2001) (citation omitted).

To the extent that the party opposing a protective order believes there is information that does not implicate any privacy or safety interests, the party opposing the protective order is

allowed to challenge a designation of confidentiality. *See O'Malley v. Vill. of Oak Brook*, 07 C 1679, 2008 WL 345607, at *2 (N.D. Ill. Feb. 6, 2008); *see also Jepson*, 30 F.3d at 858-59 (holding that a protective order will not have binding effect if at a future time either party moves for relief from the order). If a challenge is made, the party asserting confidentiality has the burden of proving the propriety of that designation. *Id.* (stating that this is in line with *Citizens First Nat. Bank of Princeton v. Cincinnati Ins. Co.*, 178 F.3d 943, 946 (7th Cir. 1999)). The proper standard for reviewing motions to modify a protective order requires the court to make a new determination balancing the interests between privacy and public access in light of the facts before the court. *Id.* (citation omitted).

Timelines respectfully moves this Court for narrow relief from the existing April 24, 2012 Protective Order. The narrow relief is to permit Timelines' President to have access to current financial information Facebook produced as attorneys-eyes only in the litigation so that he can learn the value of Timelines' damages claim and meaningfully participate in the continued prosecution and trial of this case. Mr. Hand would of course keep the information confidential. Timelines has not been able to reach agreement on this matter with Facebook, and submits that due process and justice, along with the sensible continued involvement in this case by a Timelines' official, compels the relief sought herein.

CONCLUSION

For the all the reasons state above and the Motion, the Court should grant Timelines' Motion and Order the following narrow relief from the Protective Order:

- that Brian Hand, President of Timelines, be permitted to review Facebook documents FB-TL 0011912 – 11919;
- that Mr. Hand be permitted to review the entirety of Plaintiff's and Defendant's expert damage reports (an opening and response-to-rebuttal report from Timelines, its expert

David Haas, and a rebuttal report from Facebook, its expert being Christopher J. Bokhart); and

- such further relief as is just and appropriate depending on the issues as briefed and argued

Dated: January 30, 2013

Respectfully submitted,

TIMELINES, INC.

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

James T. Hultquist (#6204320)
Douglas Alan Albritton (#6228734)
Raven Moore (#6280665)
REED SMITH LLP
10 South Wacker Drive, 40th Floor
Chicago, Illinois 60606-7507
(312) 207-1000
(312) 207-6400 (facsimile)
jhultquist@reedsmith.com
dalbritton@reedsmith.com
rmoore@reedsmith.com

CERTIFICATE OF SERVICE

The undersigned, an attorney, hereby certifies that he caused a copy of the foregoing Plaintiff Timelines, Inc.'s Motion for Narrow Relief from the Protective Order to be served on all counsel of record by means of the Court's CM/ECF System, on January 30, 2013.

/s/ Douglas A. Albritton
An attorney