

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

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

**PLAINTIFF’S MEMORANDUM OF LAW IN SUPPORT OF ITS MOTION FOR A  
TEMPORARY RESTRAINING ORDER**

**INTRODUCTION**

This is an emergency motion brought to protect the very existence of Timelines, Inc. (“Timelines”), a small company headquartered in Chicago, Illinois that has been in business for almost five years. In the past few days, Timelines has learned that Facebook, without a doubt one of the world’s largest internet businesses, plans to roll out to its self-proclaimed more than 800 million users, a competing and identical (or nearly identical) offering called “Timeline.” Timelines owns the federally registered trademark “Timelines,” and several related trademarks. While it is fair to say that the opportunity for consumer confusion is self-evident, the Court need look no further than one of the other facts that Timelines discovered this week – Facebook has begun redirecting traffic away from Timelines’ Facebook page to Facebook’s own “Timeline” page. In other words, a user who tries to navigate to Timelines’ own Facebook page is, instead, redirected by Facebook to Facebook’s own offering. This was not an accident. As set forth below, the Court should grant Timelines its request for a temporary restraining order prohibiting Facebook from offering its “Timeline” offering to its users.

### **APPLICABLE STANDARD**

The standard for grant of a temporary restraining order is the same as the standard for granting a preliminary injunction. *YourNetDating, Inc. v. Mitchell*, 88 F. Supp. 2d 870, 871 (N.D. Ill. 2000). A court must determine whether: (1) the plaintiff has some likelihood of success on the merits; (2) there is not an adequate remedy at law; and (3) plaintiff will suffer irreparable harm if the injunction is not granted. *Ty, Inc. v. Jones Group, Inc.*, 237 F.3d 891, 895-896 (7th Cir. 2001).

Once the above three requirements are met, the Court must consider the irreparable harm that the non-moving party will suffer if preliminary relief is granted, and the public interest in denying or granting the injunction. *Id.* Where it is more likely that the plaintiff will succeed on the merits, “the less the balance of irreparable harms need favor the plaintiff’s position.” *Id.* In this case, all of the factors warrant the grant of injunctive relief to Timelines.

### **BACKGROUND FACTS**

Timelines is based in Chicago, Illinois. *See* Declaration of Brian Hand (“Hand Decl.”) ¶¶ 1-3, a true and correct copy of which filed herewith as Exhibit A. Timelines is the owner of three United States trademark registrations for the trademarks “Timelines” (U.S. Reg. No. 3,684,074), “timelines.com” (U.S. Reg. No. 3,764,134), and “Timelines & Design” (U.S. Reg. No. 3,784,720) (collectively the “Timelines Marks”). *Id.* ¶ 3. Timelines uses the Timelines Marks in connection with its web-based business which offers worldwide users the opportunity to communicate with one another by posting events and contributing descriptions, photographs, videos, geographic locations and links (for ease of reference “Content”). *Id.* ¶ 4. Timelines is also an application service provider for several large publishers, including The Boston Globe, The St. Louis Post-Dispatch and The Milwaukee Journal Sentinel. *Id.* ¶ 7.

Facebook, undeniably the world's largest and most powerful social media company, recently announced its intention to launch a new version of Facebook called "Timeline" that allows its users to "[s]hare and highlight [its users'] most memorable posts, photos and life events" (*see* [www.facebook.com/about/timeline](http://www.facebook.com/about/timeline)). At the time of the filing of this motion, publicly available websites and information, including disclosure from a Facebook engineer, reflected that the "Timeline" service was not yet live. *See, e.g.*, [www.quora.com / when-will-facebook-timeline-be-publicly-available](http://www.quora.com/when-will-facebook-timeline-be-publicly-available) (engineer says Timeline not yet launched); [http://www.pcworld.com/article/240449/hack\\_your\\_way\\_into\\_facebooks\\_new\\_timeline\\_feature.html](http://www.pcworld.com/article/240449/hack_your_way_into_facebooks_new_timeline_feature.html) ("Most users will have to wait a few weeks before they get to see Facebook's most drastic changes to the service since the company was founded, but you can use a developers' workaround to gain access to the Timeline feature right now."). Hand Dec. ¶ 11.

Upon review, Facebook's "Timeline" offering is identical or virtually identical to [www.timelines.com](http://www.timelines.com). Hand Dec. ¶¶ 10-12. And, Timelines has registered the Timelines Marks in connection with its service. Hand Decl. ¶¶ 12-13. Facebook is undeniably aware of the potential for confusion because it has begun redirecting internet traffic away from Timelines' own Facebook page.

In explanation, 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. Hand Decl. ¶ 8. Timelines had maintained a Facebook page at [www.facebook.com/timelines](http://www.facebook.com/timelines), but it can no longer find that page. *Id.* ¶ 13. 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. *Id.* at ¶¶ 12-13. Now, however, when a user tries to access Timelines' Facebook page, Facebook redirects the user to Facebook's own "Timeline" offering and cannot get to Timelines' prior page. *Id.*

Timelines has continuously and consistently used the Timelines Marks on the services enumerated in its registrations since on or about September 15, 2008 to promote and endorse its business. *Id.* ¶ 17. In 2011, the Timelines.com website has averaged approximately 97,000 visitors per month (based upon Google Analytics). *Id.* ¶ 18. Timelines has actively promoted Timelines.com on Twitter and Facebook through posting events of the day, and reaching out to bloggers and others. *Id.* ¶ 19. Timelines has been nominated or recognized for numerous awards and accomplishments. *Id.* ¶ 20. For all of this, Timelines has invested several million dollars into its business and has taken swift action to protect its trademarks. *Id.* ¶ 21.

Facebook's use of "Timeline" infringes on Timelines' registered trademarks. If left unchecked, Facebook's new "Timeline" offering will swallow Timelines' corporate identity, branding, and source-identifying trademarks. Once Facebook rolls out its Timeline web offering to its publicly proclaimed more than 800 million registered users, Timelines will no longer be able to meaningfully use its federally registered Timelines Marks as a unique indication of the source of its goods and services. Virtually overnight, the more than three-quarters of a billion registered Facebook users will come to associate the mark "TIMELINE" with Facebook's internet services, rather than its registered owner Timelines, Inc. Moreover, those users who are already familiar with Timelines will be lead to believe that Facebook's new so-called "Timeline" offering is somehow affiliated with or sponsored by Timelines – however, no such relationship exists.

Timelines diligently registered its Timelines Marks on the United States Principal Trademark Registry and has used its marks in connection with the very services that Facebook now intends to pursue in connection with its “Timeline” mark. Hand Dec. ¶¶ 14-19. Given the scope and scale of Facebook’s internet presence, allowing Facebook to release its “Timeline” offering will irretrievably decimate the goodwill and recognition that Timelines has established in its Timelines Marks. Timelines therefore seeks a temporary restraining order pursuant to Federal Rule of Civil Procedure 65 and the Lanham Act (15 U.S.C. § 1051, *et seq.*), enjoining Facebook from infringing on its name or federally registered trademarks.

Facebook’s “Timeline” offering plainly infringes and Timelines will succeed on the merits of its claims. Facebook will not be unjustly harmed by the entry of a TRO preventing it from infringing on federally registered trademarks. Accordingly, Timelines respectfully requests that this Court expeditiously enter a temporary restraining order.

**DEFENDANTS’ UNLAWFUL USE OF THE  
TIMELINES MARKS SHOULD BE ENJOINED**

**A. Timelines Is Likely To Succeed On The Merits**

Timelines is likely to succeed on its claim against Facebook for trademark infringement under the Lanham Act and Illinois state law causes of action.

Section 32 of the Lanham Act prohibits infringement of federally registered trademarks and prohibits “use in commerce [of] any reproduction, counterfeit, copy, or colorable imitation of a registered mark in connection with the sale, offering for sale, distribution, or advertising of any goods or services on or in connection with which such use is likely to cause confusion, or to cause mistake, or to deceive[.]” 15 U.S.C. § 1114.

Section 43 of the Lanham Act further forbids any false designation of origin and states:

[a]ny person who, on or in connection with any goods or services . . . uses in commerce any word, term, [or] name . . . or any false designation of origin . . . which is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of such person with another person, or as to the origin, sponsorship, or approval of his or her goods, services, or commercial activities by another person, or in commercial advertising. . . shall be liable in a civil action by any person who believes that he or she is or is likely to be damaged by such act.

15 U.S.C. § 1125(a)(1).

To succeed on the merits of its trademark infringement claims, Timelines must show: (1) that the Timelines Marks are valid trademarks owned by Timelines; and (2) Facebook's use of the Timelines Marks creates a likelihood of confusion. *Ty, Inc.*, 237 F.3d at 897. As set forth below, Timelines has substantial evidence to establish these elements.

**1. Timelines Has The Exclusive Rights To Use The Timelines Marks.**

Defendants cannot dispute the validity and strength of the Timelines Marks. A certificate of registration is *prima facie* evidence of the validity, ownership and exclusive right to use the registered mark at issue in connection with the services specified in the certificate of registration. 15 U.S.C. § 1057. Certificates of registration for the Timelines Marks are attached to the Hand Declaration as Exhibit E. Timelines has continuously used the Timelines Marks since at least as early as 2008. Timelines obtained its first federal registration for the Timelines Marks on September 15, 2009. As such, there is no dispute that Timelines is the sole and exclusive owner of the Timelines Marks.

**2. Facebook's Contemplated Use Of The Timelines Marks Establishes a "Likelihood of Confusion" As A Matter Of Law.**

"The 'keystone' of trademark infringement is 'likelihood of confusion' as to source, affiliation, connection or sponsorship of goods or services among the relevant class of customers and potential customers." *Sands, Taylor & Wood Co. v. Quaker Oats Co.*, 978 F.2d 947,

957 (7th Cir.1992) (emphasis added). The similarity between the relevant marks (i.e. “TIMELINES” and “TIMELINE”) is unquestionable. Moreover, both Timelines and Facebook use these marks in connection with the creation of customizable web pages that allow users to post text, photo, and video content to a specific web page. These facts alone empower this Court to conclude that Facebook’s use of the Timelines Marks will result in a likelihood of confusion.

The unauthorized and improper nature of Facebook’s use of the Timelines Marks is further demonstrated by considering the following multi-factor test utilized by the Seventh Circuit when evaluating whether a likelihood of confusion exists between two marks: “(1) the similarity of the marks in appearance and suggestion; (2) the similarity of the products; (3) the area and manner of concurrent use; (4) the degree of care likely to be used by consumers; (5) the strength of the plaintiff’s mark; (6) whether any actual confusion exists; and (7) the defendant’s intent to palm off its goods as those of the plaintiffs.” *Ty, Inc.*, 237 F.3d at 897-898. None of these factors by itself is dispositive of the likelihood of confusion question, and different factors will weigh more heavily from case to case depending on the particular facts and circumstances involved. *Id.* Even though no one factor is decisive, the similarity of the marks, the intent of the defendant, and evidence of actual confusion are the “most important factors” in a likelihood of confusion case. *Id.*

The “area and manner” of the contemplated use of Facebook’s “Timeline” mark suggests that confusion will result, as both Timelines and Facebook operate websites aimed at technically-inclined individuals who are interested in creating customized web pages. Given the rate at which popular websites and technology companies merge and incorporate one another’s services, consumers encountering Facebook’s “Timeline” application may reasonably assume that it is licensed from or affiliated with Timelines. As such, the degree of care likely to be exercised by

consumers in utilizing the competing services in question is relatively low. Numerous other explanations and examples demonstrating the likelihood of confusion exist. However, additional argument is simply unnecessary to establish that confusion will result where two competing companies offer nearly identical services under the marks “TIMELINES” and “TIMELINE”.

**B. There is No Adequate Remedy at Law and Timelines Will Continue To Suffer Irreparable Injury In The Absence Of Immediate Injunctive Relief**

The injuries caused by trademark infringement “are by their very nature irreparable and not susceptible of adequate measurement for remedy at law.” *Processed Plastic Co. v. Warner Communications, Inc.*, 675 F.2d 852, 858 (7th Cir. 1982). Facebook is poised to release its new “Timeline” technology to its more than 800 million registered users. If Facebook is permitted to move forward with this plan, Timelines’ corporate and product identity will cease to exist. No amount of corrective advertising or disclaimers on the Facebook website will restore the goodwill, reputation, and recognition that Timelines has worked to establish in the Timelines Marks. Timelines’ only hope to preserve its rights in the Timelines Marks is to preemptively block Facebook’s release. Unless Facebook’s unlawful use of the Timelines Marks is enjoined, Timelines will suffer damage to its reputation and loss of goodwill causing irreparable injury.

**C. Injunctive Relief Will Not Unjustly Harm Defendant and Will Serve The Public Interest.**

In deciding whether to issue a temporary restraining order, the Court should also consider the harm to defendants if they are enjoined, as well as whether the order will serve the public interest. *Ty, Inc.*, 237 F.3d at 897-898.

A Temporary Restraining Order will not unjustly harm Facebook. The “TIMELINES” mark was filed on May 23, 2008 and was published by the United States Patent and Trademark Office on January 6, 2009. There was nothing preventing Facebook from coming up with an original name for its new service offering. However, Facebook opted to pursue the



“TIMELINE” mark in the face of existing U.S. trademark registrations for “TIMELINES” in connection with “[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” and “managing web sites of others in the fields of historical, current and upcoming events.”

Facebook’s blatant disregard for the Timelines Marks has jeopardized the years of hard work and millions of dollars that Timelines has invested in its products and brand identity. Granting the injunctive relief sought by Timelines would merely require Facebook to cease its impermissible use of the Timelines Marks and develop an original mark to use in connection with Facebook’s customizable web page service offerings. Requiring Facebook to undertake that which it is legally bound to do will not unjustly harm Facebook.

Finally, granting a Temporary Restraining Order will serve the public interest. The public has an interest in not being confused by improper use of another’s trademark. *See Int’l Kennel Club of Chicago, Inc. v. Mighty Star, Inc.*, 846 F.2d 1079, 1092 (7th Cir. 1988) (“[T]he relevant consideration [in determining whether the public interest will be disserved by the grant of an injunction] is the consumer’s interest in not being deceived about the products they purchased.”). Granting the Temporary Restraining Order will clearly further this goal and serve the public interest by eliminating potential confusion among competing services. Perhaps more importantly, granting the Temporary Restraining Order will further serve the public interest by demonstrating that small companies are entitled to the same protections under the Lanham Act as large companies and encouraging small companies to proceed with confidence when investing time, money, and effort to develop and protect their identity.

**CONCLUSION**

Timelines has met its burden to establish that it is likely to prevail on the merits of its trademark infringement claims. Timelines is suffering and will suffer irreparable harm if Facebook is not enjoined from their unlawful conduct, and the public interest will be served by injunctive relief. For the foregoing reasons, Timelines respectfully requests that this Court issue a Temporary Restraining Order in the form submitted herewith.

Dated: September 30, 2011

TIMELINES, INC.

By:  /s/ James T. Hultquist

One of its Attorneys

James T. Hultquist (#6204320)  
Douglas Alan Albritton (#6228734)  
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

**CERTIFICATE OF SERVICE**

I hereby certify that on September 30, 2011, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing and for transmittal of a Notice of Electronic Filing to the following, who was served via electronic mail:

Steven D. McCormick  
Kirkland & Ellis LLP  
300 North LaSalle Street  
Chicago, IL 60654

s/ James T. Hultquist\_\_\_\_\_