

**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.)	HONORABLE JOHN W. DARRAH
)	
Defendant.)	

**FACEBOOK, INC.'S STATEMENT OF UNDISPUTED MATERIAL
FACTS IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT**

Pursuant to Local Rule 56.1, Defendant and Counterclaimant Facebook, Inc. (“Facebook”) respectfully submits this Statement of Undisputed Material Facts in support of its Motion for Summary Judgment.

Parties

1. Facebook is a corporation organized and existing under the laws of the State of Delaware, with its principle place of business in Menlo Park, California. (First Am. Compl. (Dkt. No. 27) ¶ 16; Answer (Dkt. No. 33) ¶ 16; Declaration of Brendan J. Hughes in Support of Facebook’s Motion for Summary Judgment (“Hughes Decl.”), ¶ 2, Ex. 1.)

2. Plaintiff/Counter-Defendant Timelines, Inc. (“Plaintiff”) is a corporation organized under the laws of the State of Delaware, with its principal place of business in Chicago, Illinois. (First Am. Compl. (Dkt. No. 27) ¶ 15; Answer (Dkt. No. 33) ¶ 15.)

Jurisdiction and Venue

3. 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, as well as supplemental jurisdiction over state law claims pursuant to 28 U.S.C. § 1367(a). (First Am. Compl. (Dkt. No. 27) ¶ 18; Answer (Dkt. No. 33) ¶ 18.) This Court also has personal jurisdiction over Facebook. (*Id.*)

4. 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 allegedly giving rise to the claims in this case took place in this judicial district. (First Am. Compl. (Dkt. No. 27) ¶ 17; Answer (Dkt. No. 33) ¶ 17.)

Undisputed Material Facts

I. Plaintiff’s Services.

5. Plaintiff offers an online service through its website Timelines.com where, according to its website, users “can 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.” (Hughes Decl. ¶ 3, Ex. 2 at FB_TL00000660.)

6. Timelines.com uses “timelines, maps and lists to enable unique ways for readers to explore and learn about topics....” (Hughes Decl. ¶ 4, Ex. 3 at FB_TL00010742.) An excerpt of a timeline that Plaintiff offered on its timelines.com website as it appeared in September 2011 is below.

The screenshot displays the Timelines.com interface. At the top, there are navigation links for Facebook and Twitter, and a search bar. The main content area features a timeline for 'Amelia Earhart'. A specific event is highlighted for July 1921: 'Amelia Earhart buys her first plane'. The event description reads: 'She hired Neta Snook, the first woman instructor to graduate from the Curtiss School of Aviation, to teach her. She paid for the first lessons by driving a sand and gravel truck. After only 2(frac 12) hours of instruction, she decided that she wanted to buy her own plane. She bought a small experimental plane that cost \$2,000 with money advanced by her mother and took a job at a local telephone company sorting mail to help pay for it.' Below this event is a 'View Event' button. Underneath the main event is a section titled 'Amelia Earhart Timeline' with a list of key events:

- 1897 Jul 24** Amelia Earhart is born. Amelia Mary Earhart, daughter of Samuel "Edwin" Stanton Earhart (March 28, 1867) and Amelia "Amy" Otis Earhart (1869–1962), was born in Atchison, Kansas, in the home of her maternal grand...
- 1920 Dec 28** Amelia Earhart experiences her first flight with Frank Hawks. By 1919 Earhart prepared to enter Smith College but changed her mind and enrolled at Columbia University signing up for a course in medical studies among other programs. She quit a year l...
- 1921 Jan 3** Amelia Earhart takes first flying lesson. Earhart had her first lessons, beginning on January 3, 1921, at Kinner Field near Long Beach but to reach the airfield Amelia took a bus to the end of the line, then walked four miles (6 ...
- 1921 Jul** Amelia Earhart buys her first plane. She hired Neta Snook, the first woman instructor to graduate from the Curtiss School of Aviation, to teach her. She paid for the first lessons by driving a sand and gravel truck. After o...
- 1922 Oct 22** Amelia Earhart sets altitude record for female pilots. On October 22, 1922, Earhart flew the Avroster to an altitude of 14,000 feet (4,268 m), setting a world record for female pilots. On May 15, 1923, Earhart became the 10th woman to be issu...
- 1928 Jun 17** Amelia Earhart becomes first woman to fly across the Atlantic. After Charles Lindbergh's solo flight across the Atlantic in 1927, Amy Prentiss Guest, (1873–1959), expressed interest in being the first woman to fly (or be flown) across the Atlantic Ocea...
- 1929 Aug** First Women's Air Derby, Powder Puff Derby. Earhart subsequently made her first attempt at competitive air racing in 1929 during the first Santa Monica to Cleveland Women's Air Derby. Earhart clocked the 1,800-mile trip in 19 hours...

On the right side of the screenshot, there is an advertisement for Delta America with the text: 'TIME FLIES WHEN YOU'RE FLYING FUN. \$49. SAN FRANCISCO TO LOS ANGELES. GRAB A SEAT TO LAX.'

(Hughes Decl. ¶ 5, Ex. 4.)

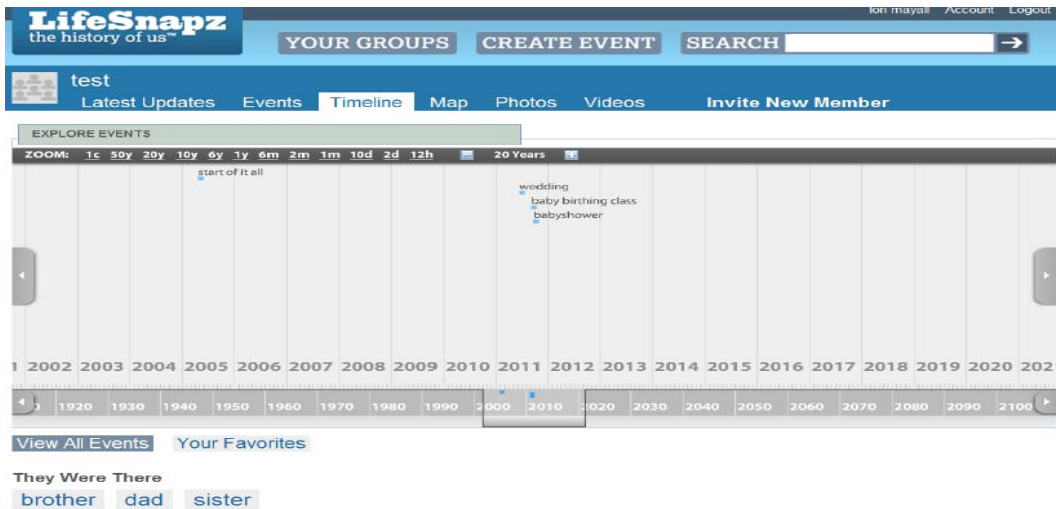
7. Plaintiff launched its timelines.com website in April 2009. (Hughes Decl. ¶ 6, Ex. 5 at 45:25-47:11.)

8. Plaintiff offers another online service under the name “LifeSnapz” at www.lifesnapz.com, which “is a free, easy and secure way for people to record and organize important events, milestones and memories in their lives. Users of LifeSnapz can contribute text, photos, and video to describe these events, share them with self-designated groups (like family members, colleagues, schoolmates or youth sports teams) and explore these events using dynamic timelines, maps, and lists.” (Hughes Decl. ¶ 7, Ex. 6 at FB_TL_00000417.) Plaintiff uses the term “timeline” generically on its LifeSnapz website. (Hughes Decl., ¶ 6, Ex. 5, Hand Depo. at 108:11-24.)

9. Plaintiff’s LifeSnapz website describes the “dynamic timelines” available on LifeSnapz as a “timeline feature”:

LifeSnapz enables you to explore your events, photos and videos using timelines and maps.
The timeline feature lets you visualize your events across time, and the map feature provides a unique way to visualize your events across a town, state, country or the world. Additionally, timelines and maps can be instantly customized based on who was at an event and how the event was tagged. With this feature, you can easily find the types of events and people you are looking for and create instant timelines and maps based on them.

(*Id.* at FB_TL_00000405.) A depiction of Plaintiff’s “timeline” feature as found on the LifeSnapz website is below.



(Hughes Decl. ¶ 8, Ex. 7.)

10. In April 2010, Plaintiff launched another service called “Timelines SE,” which is “a 100% outsourced, custom branded service, [that] helps news websites organize, present, and monetize past content *** For readers, the service makes past content more readily available and presents it in an intuitive, easy-to-navigate manner using timelines, maps, and lists” (Hughes Decl. ¶ 4, Ex. 3 at FB-TL_00010745.) An example of a Timeline SE outsourced timeline is below.



Brewers Timelines

2011 Season

Next game Oct 10 2011
vs. St. Louis Cardinals [View games](#)

2011 SEASON

Mar 31	Apr 2	Apr 3	Apr 4	Apr 5	Apr 6	Apr 7	Apr 8	Apr 9	Apr 10	Apr 13	Apr 14	Apr 15	Apr 17	Apr 17	Apr 18
L	L	L	L	W	W	W	L	W	W	W	W	L	L	L	W
6-7	2-4	3-12	1-2	1-0	5-4	4-2	4-7	6-0	6-5	6-0	4-1	3-4	4-8	1-5	6-3

2011 SEASON

Oct 9 2011
Braun, Fielder land big blows in comeback victory
Brewers 9 St. Louis Cardinals 6
at Miller Park
[GAME COVERAGE](#)

Oct 7 2011
Brewers win thriller, get home-field edge rest of the way
Brewers 3 Arizona Diamondbacks 2
at Miller Park
[GAME COVERAGE](#)

More timelines: [Packers](#) | [Bucks](#) | [Badgers](#) | [Badgers](#) | [Golden Eagles](#)

(Hughes Decl. ¶ 9, Ex. 8.) Plaintiff uses the term “timelines” generically to identify its Timelines SE service offerings. (Hughes Decl., ¶ 6, Ex. 5, Hand Depo. at 96:24-97:16.)

11. On its own Facebook page, Plaintiff explains that timelines.com is “for individuals and entities that want to reach and interact with a broad audience about publicly shared events”; LifeSnapz.com is “for families and other trusted groups that want a more controlled, permission-based environment for recording and sharing their events”; and Timelines SE is “for media businesses that want a custom-branded, hosted solution as part of

their websites to showcase past content in an innovative, contextually relevant manner.”
(Hughes Decl. ¶ 10, Ex. 9.)

II. “Timeline(s)” Is a Common English Word Used to Refer to an Arrangement of Information in Chronological Order.

12. The term “timeline” is defined in numerous dictionaries, such as the American Heritage Dictionary, Merriam Webster’s Collegiate Dictionary, and Wikipedia. (Hughes Decl. ¶¶ 11-18, Exs. 10-15.)

13. A recent GOOGLE search for the term “timeline” returned over 454 million hits, including thousands of image results depicting a wide variety of timelines. (Hughes Decl. ¶ 17-18, Exs. 16-17.)

14. News media regularly use the term “timeline” for reporting events in chronological order. (Hughes Decl. ¶ 19-21, Exs. 18-20.)

15. The U.S. Patent and Trademark Office (“PTO”) itself uses the term “timeline(s)” generically on its website when referring to its “Trademark Application and Post-Registration Process Timelines.” (Hughes Decl. ¶ 22, Ex. 21.)

III. Uses of the Term “Timeline(s) by Plaintiff and its Customers.

16. Prior to initiating this lawsuit, Plaintiff’s Timelines.com website offered a page entitled “Popular Timelines,” which listed over thirteen different categories of “timelines” such as “Timelines of Wars and Conflict,” and “Timelines of Famous People”; Plaintiff also used the term “timeline” in the names of its various arrangements of information in chronological order, such as the “Battle of Bull Run Timeline,” “Al Capone Timeline,” and the “Amelia Earhart Timeline.” (Hughes Decl. ¶¶ 5, 6, 23-25, Exs. 4, 5, Hand Depo. at 52:12:23; Exs. 22-24.) Plaintiff itself admits that “[t]he noun ‘timeline’ refers to a chronological organization of events or other information.” (Hughes Decl., ¶ 6, Ex. 5, Hand Depo. at 40:19-25.)

17. After initiating this lawsuit, Plaintiff removed the “Popular Timelines” page from

its website and replaced it with a page entitled “Popular Topics.” (Hughes Decl. ¶ 26, Ex. 25.) Plaintiff also removed the term “timelines” from the names of the various categories identified on this page so that, for example, “Timelines of Wars and Conflict” became “Wars and Conflict,” and “Timelines of Famous People” became “Famous People.” (*Id.*) Plaintiff also removed the term “Timeline” from the names of its various arrangements of information in chronological order and replaced it with the term “Events” so that, for example, the “Al Capone Timeline” became “Al Capone Events” and the “Amelia Earhart Timeline” became “Amelia Earhart Events.” (Hughes Decl. ¶ 27-29, Exs. 26-28.)

18. Mr. Brian Hand, Plaintiff’s Co-founder and Chairman, added an event to Plaintiff’s Timelines.com website dated April 20, 2009, entitled: “Google Labs Launches Google News Timeline,” which stated: “Timelines are becoming an increasingly popular user interface. Today, Google Labs launched a new product called Google News Timeline, which lays out the top stories from Google News in columns for each day....” (Hughes Decl. ¶ 30, Ex. 29.)

19. Plaintiff has operated a blog at <http://blog.timelines.com/> since 2008. Several blog posts include uses of the terms “timeline” and “timelines” to refer to an arrangement of information in chronological order. (Hughes Decl. ¶¶ 31-32, Exs. 30-31.)

20. Plaintiff also launched and maintained a website dedicated solely to Rod Blagojevich (previously available at www.rodblagojevich.com) that included an arrangement of information related to Rod Blagojevich in chronological order called a “Timeline.” (Hughes Decl. ¶ 33, Ex. 32.)

21. Customers of Plaintiff’s Timeline SE service used the term “timeline(s)” in the name of the outsourced chronologies of events posted on their websites, such as Boston.com’s “2010 Massachusetts Gubernatorial Election Timeline,” and “Celtics Timeline.” (Hughes Decl.

¶¶ 34-36, Exs. 33-35.)

22. With the exception of this lawsuit, Plaintiff has not made any effort to enforce its purported rights in the alleged mark “Timelines.” (Hughes Decl. ¶ 6, Ex. 5, Hand Depo. at 212:23-213:3.)

IV. Uses of the Term “Timeline(s) by Third Party Competitors.

23. Numerous third party competitors of Plaintiff have used the term “timeline(s)” to identify or describe their timeline-related goods and services. In fact, the following entities, among others, all used the term “timeline(s)” before Plaintiff first used “timelines” in 2009: TimelineIndex.com, Famento, Inc. (“Famento”), Kidasa Software (“Kidasa”), Underlying, Inc. (“Underlying”), Twitter, Inc. (“Twitter”), SmartDraw, Tom Snyder Productions, Inc. (“Tom Snyder Productions”), International Reading Association, the Massachusetts Institute of Technology (“MIT”), Timetoast, ZTimeline, Allofme, Timeline Maker, HistoricalTimeline.com, Timelines.info, and Ourtimelines.com. (Hughes Decl. ¶¶ 37, 40-44, 48-52, 54-57, 59-62.)

24. “TimelineIndex.com is a website that offers historical information and other content in the form of various timelines, as well as timeline creation services;” these services were first offered in October 2003. (Hughes Decl. ¶ 37, Ex. 36, Affidavit of Jan Battem ¶¶ 2, 5.) The banner at the top of TimelineIndex.com’s home page states prominently: “Timelines, Who, What, Where, When ...” (*Id.* ¶ 3, Ex. A.) TimelineIndex.com also offers a “Timelines Poster” and “Timeline Widgets.” (*Id.*) According to Mr. Battem’s affidavit, as of September 2012, TimelineIndex.com has had over 5 million visitors (58% from the United States) and over 20 million page views. (*Id.* ¶ 10.)

25. Xtimeline is a “timeline tool” offered by Famento, which “offer[s] historical information and other content in the form of various timelines, as well as timeline creation services” through the www.xtimeline.com website; these services were first offered in July 2007.

(Hughes Decl. ¶ 39, Ex. 38, Affidavit of Kevin Chen (“Chen Aff.”) ¶¶ 3, 6.) On its website, Xtimeline is defined as “a free web-based timeline” and “a place for you to create, share and discuss interesting timelines.” (*Id.* ¶ 4, Ex. A; Hughes Decl., ¶ 38, Ex. 37.) The Xtimeline home page includes: (i) a link to “Featured Timelines”; (ii) a search bar that states “search for a timeline”; (iii) a prominent graphic at the top that states: “Create a timeline!”; (iv) a link to “Recent Timeline Lists”; and (v) a link to “Timeline Categories.” (Chen Aff. ¶ 4, Ex. A.) According to Mr. Chen’s affidavit, as of September 28, 2012, Famento had over 30,000 users on xtimeline.com (approximately 70% located in the United States), over 239,000 monthly unique visitors (approximately 55% located in the United States), and over 747,000 monthly page views. (*Id.* ¶ 10.)

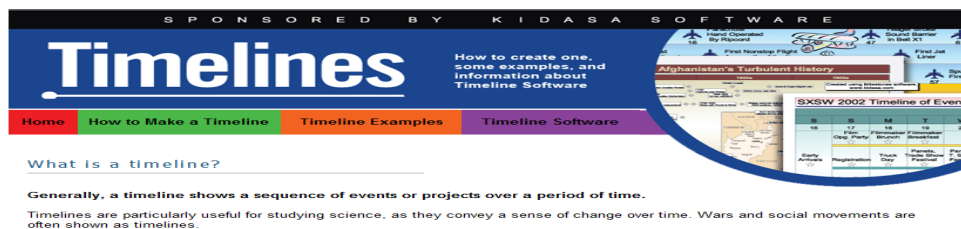
26. Underlying launched a “free digital timeline website” (available at www.dipity.com) under the mark DIPITY around March 2008. (Hughes Decl. ¶¶ 40, 41, Exs. 39, 40, Deposition of Mr. Derek Dukes at 11:25-12:6.) Underlying owns a trademark registration for the mark DIPITY for: “Computer services, namely, providing on-line, non-downloadable software for the creation of timelines based on user-supplied information; Computer services, namely, hosting and maintaining an online website for users to create timelines based on user-supplied information, as well as view the timelines of others.” (*Id.*, Pl. Depo. Ex. 2.) Dipity’s users can select the “Create a Timeline” tab identified at the top of Dipity’s home page to “create, share, embed and collaborate on interactive, visually engaging timelines.” (Hughes Decl. ¶ 40, Ex. 39.)

27. Twitter, a real-time information network that connects over 200 million users using small bursts of information called “Tweets,” has been using the term “timeline” since 2006 to describe a collected stream of Tweets listed in real-time chronological order. Twitter uses the term “timeline” because it believes it is the generic term for such temporal lists. (Hughes Decl.

¶¶ 43, 44, Exs. 42, 43.)

28. Webalon Ltd. (“Webalon”) began offering timeline creation software under the brand TIKI-TOKI (available at www.tiki-toki.com) in March 2011. (Hughes Decl. ¶ 45, Ex. 44, Affidavit of Alex Kearns ¶¶ 1-3.) Tiki-Toki’s home page offers an example of a timeline and states: “Create beautiful timelines!”; “Tiki-Toki is the best and easiest way to create beautiful interactive timelines that you can share on the web”; and “You’ll be creating timelines in minutes.” (*Id.* at ¶ 4, Ex. A.) As of August 31, 2012, Tiki-Toki had more than 60,000 users of its timeline software. (*Id.* at ¶ 9.)

29. Kidasa has operated the website www.timelinesoftware.com, which provides general information about timelines and has been used to promote its timeline creation software products since 2002. (Hughes Decl. ¶ 42, Ex. 41.) The term “Timelines” is featured prominently at the top of home page, as shown below:



Kidasa’s website also provides the commonly accepted meaning of a timeline: “Generally, a timeline shows a sequence of events or projects over a period of time” (*Id.*) (see screenshot above).

30. Tom Snyder Productions has offered the Timeliner product since 1987, which is an “educational software that’s delivered on a CD that allows teachers or students in their class to type in dates and facts and the computer will create a scaled timeline that you could print out” and uses the term “timeline” to describe the Timeliner product “because the program creates

timelines, so it would be natural to use the word ‘timeline’ [to] describe what Timeliner does.” (Hughes Decl. ¶ 51, Ex. 50, Deposition of Mr. Richard Abrams at 14:15-13; 37:2-38:23.)

31. International Reading Association has offered a “web-based Timeline Tool” since approximately 2003 and identifies the tool as the “Timeline Tool” because “[i]t creates a timeline.” (Hughes Decl. ¶ 53, Ex. 51, Deposition of Ms. Bridget Hilferty at 17:10-19.)

32. SmartDraw has offered timeline creation software since as early as 1996 and has used the term “timeline” in describing its software because it is “descriptive of the feature.” (Hughes Decl. ¶ 49, Ex. 48, Deposition of Mr. Anthony Patterson at 26:6-15.) *See also* (Hughes Decl. ¶ 48, Ex. 47.)

33. Mnemograph LLC (“Mnemograph”) has offered “free web-based timeline software” since February 2008 and has used the term “timeline” to refer to its web-based software because “[t]he word timeline is probably just the most accurate word that people in the general public would have in their vocabulary to understand what it is that we have as a product. It’s a common word that’s used to refer to a visual display of historical information on a horizontal axis.” (Hughes Decl., ¶ 47, Ex. 46.)

34. MIT developed a timeline software program in 2006, available at <http://www.simile-widgets.org/timeline/>. (Hughes Decl. ¶¶ 53-54, Exs. 52, 53.) “The Timeline project was a JavaScript software library that aimed to make it easy, at least easier, for individuals to create timeline visualizations of structured data that they owned.” (Hughes Decl. ¶ 54, Ex. 53, Deposition of Dr. David Karger, MIT designee, at 16:5-11.) “Timeline” is used to describe the software “because it’s displaying a timeline.” (*Id.* at 54:22-25.) If MIT was prevented from using the term “timeline” it would not be able to properly convey the purpose of the software, at least “not without a lot of roundabout circumlocutions.” (*Id.* at 55:15-20.)

35. The founders of TimelinesIndex.com, Famento, and Webalon have each provided

a sworn statement in the form of an affidavit stating that the term “timeline” identifies their goods and services because their goods and services enable users to view and create timelines, and that they use the term “timeline(s)” to identify their goods and services because it is the generic name for their goods and services. (Hughes Decl. ¶¶ 37, 39, 45, Exs. 36, 38, 44.)

36. Witnesses on behalf of TimelineIndex, Famento, Webalon, Mnemograph, International Reading Association, and MIT have declared under penalty of perjury that their companies would be at a competitive disadvantage if they were not allowed to use the term “timeline” to identify or describe their timeline goods and/or services. (Hughes Decl. ¶¶ 37, 39, 45, 47, 52, 54, Exs. 36, 38, 44, 46, 51, 53.)

37. Witnesses on behalf of TimelineIndex, Famento, Underlying, Webalon, Tom Snyder Productions, International Reading Association, SmartDraw, Mnemograph, and MIT have declared under penalty of perjury that they are not aware of any instances of confusion arising from their use of the term “timeline(s)” in connection with their timeline goods and services, and that neither Plaintiff nor any third party has ever objected to their use of the term “timeline(s).” (Hughes Decl. ¶¶ 37, 39, 41, 45, 51, 52, 49, 47, 54, Exs. 36, 38, 40, 44, 50, 51, 48, 46, 53.)

V. Consumer Survey Evidence Shows that the Term “Timelines” is a Common Name.

38. Dr. Deborah Jay conducted a *Teflon* model survey to determine the primary significance of the terms “timeline” and “timelines” among individuals age 14 and older who had accessed or were likely to access a social networking website or a website where a user could record events and contribute descriptions, photos, videos and links to related events. (Hughes Decl. ¶ 63, Ex. 62, p. 7.) Only respondents who demonstrated an understanding of the difference between a brand name and a common name were administered the substantive portion of the survey questionnaire. (*Id.*, p. 11.)

39. 68% of respondents in Dr. Jay's survey expressed a belief that the term "timeline" was generic (not a brand) when asked whether "timeline" was a common name or brand name when used in connection with a website or website feature; 69% of respondents expressed a belief that the term "timelines" was generic when asked the same question regarding "timelines." (*Id.*, pp. 17-25.) 24% of the respondents believed the terms "timeline" and "timelines" were brand names. (*Id.*)

VI. The U.S. Patent & Trademark Office Refused to Register Plaintiff's Application for "Timelines" on the Ground that the Term is Merely Descriptive.

40. On September 26, 2011, shortly after filing this lawsuit, Plaintiff filed an application with the PTO to register the alleged mark "Timelines" in connection with a description of services based, in part, on services identified in Facebook's own trademark registrations. (Hughes Decl. ¶¶ 6, 64, Exs. 5, 63, Hand Depo. at 198:7-200:22.)

41. The PTO refused to register Plaintiff's alleged mark in connection with the identified services on the ground that the term was merely descriptive, citing in support of its refusal many of the third parties mentioned above. (Hughes Decl. ¶ 64, Ex. 63 at FB_TL_00002591-2594.)

42. The PTO Examining Attorney noted that "[i]n this case, the wording 'timelines' as applied to the applicant's web-based software services describes a feature, characteristic and function of those services." (*Id.* at FB_TL_00002591.)

43. Plaintiff did not respond to the PTO's refusal and as a result, the PTO ultimately deemed the application to be abandoned. (*Id.* at FB_TL_00002642.)

VII. There Is No Evidence Demonstrating that Plaintiff's Alleged Mark Has Acquired Secondary Meaning.

44. Plaintiff has not produced consumer survey evidence or direct consumer testimony relevant to establishing secondary meaning of the term "timelines." (Hughes Decl. ¶

65.)

45. Timelines has spent a *de minimus* amount of money, if any, on advertising its services provided through timelines.com. (Hughes Decl. ¶ 6, Ex. 5, Hand Depo. at 177:5-21; 180:4-181:7; 182:12-25; Hughes Decl. ¶ 73, Ex. 71, Armour Depo. at 89:23-90:17.)

46. Plaintiff's total sales during the past 3 years are approximately [REDACTED]. (Hughes Decl. ¶ 66, Ex. 64.)

47. Timelines.com has 1,209 active users. (Hughes Decl. ¶ 67, Ex. 65.)

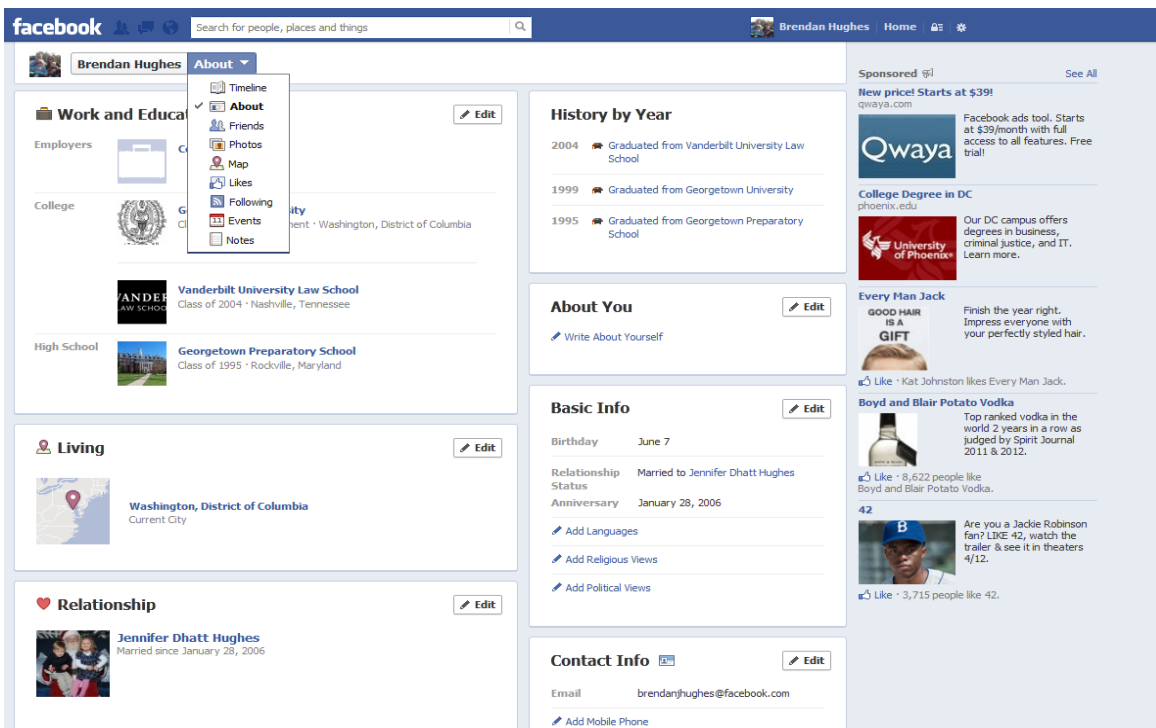
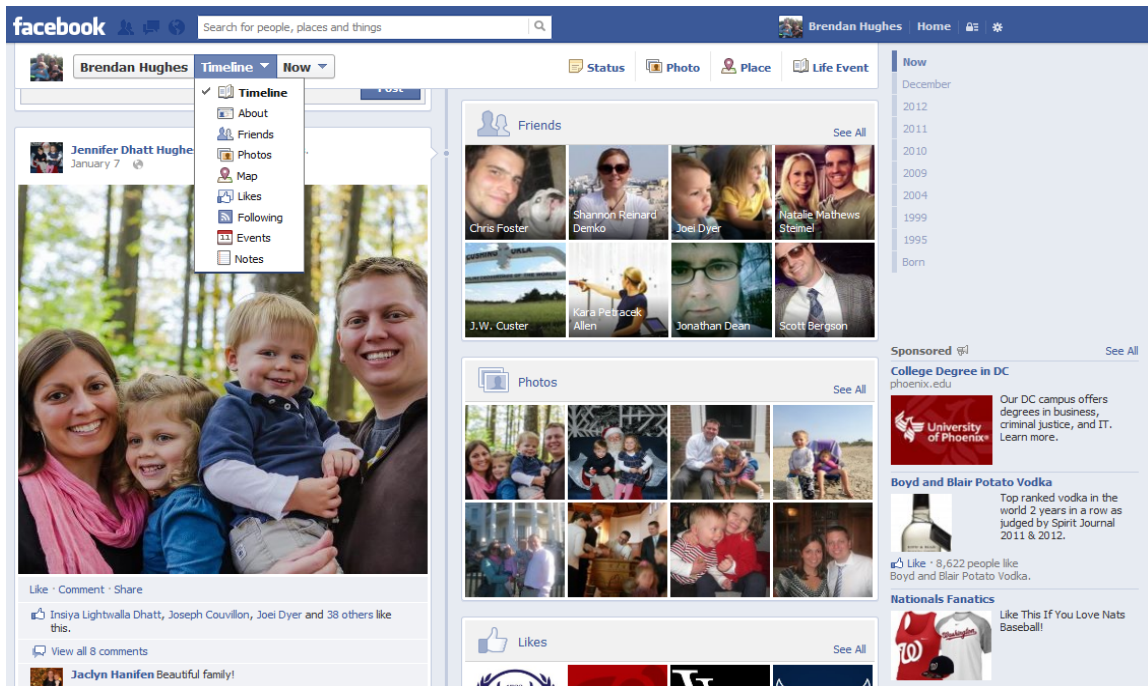
VIII. The "Timeline" Feature on Facebook.

48. Facebook's "timeline" feature "changes the default profile from a list of your most recent updates to a complete summary of your entire life since birth. . . . The new Facebook profile is divided into two main columns, [typically] with a line down the middle representing the passage of time," as well as a navigational tool on the top right corner of the user interface allowing users to easily access content posted in a particular month and year. (Hughes Decl. ¶ 68, Ex. 66.) Below is an excerpt of the redesigned profile as a timeline.



(Hughes Decl. ¶ 69, Ex. 67.)

49. While logged into Facebook, a registered user can navigate through Facebook's different features by accessing a drop down menu. Set forth below are depictions of such a drop down menu:



(Hughes Decl. ¶¶ 69-70, Exs. 67-68.)

50. In addition to the “timeline” feature, the drop down menu often includes features such as “Map,” “Friends,” “Photos,” and “Events.” The term “Map” describes a feature that displays the geographic location of events and experiences; the term “Friends” describes a feature that lists a user’s friends and connections on Facebook; the term “Photos” describes a feature that displays photographs; and the term “Events” describes a feature that identifies and provides information regarding specific events. (Hughes Decl. ¶¶ 69-70, Exs. 67-68.)

51. Facebook selected the term “timeline” to identify the redesign of the profile page because the redesign depicted a user’s content as a timeline. Thus, the term “timeline” [REDACTED]
[REDACTED]
[REDACTED] (Hughes Decl. ¶ 71, Ex. 69.)

52. Facebook does not use any trademark symbols in connection with its use of the term “timeline.” (Hughes Decl. ¶ 72, Ex. 70.)

53. Facebook also uses the term “timeline” in textual sentences, such as the following: “Your Stories: Share and highlight your most memorable posts, photos and life events on your timeline.”; “Your Cover: . . . It’s the first thing people see when they visit your timeline.”; “You choose what’s featured on your timeline.” (Hughes Decl. ¶ 72, Ex. 70.)

Dated: January 31, 2013

Respectfully submitted,

COOLEY LLP

By: /s/ Peter J. Willsey
Peter J. Willsey (*pro hac vice*)
Brendan J. Hughes (*pro hac vice*)
COOLEY LLP
1299 Pennsylvania Ave, NW Suite 700
Washington, DC 20004-2400
Tel: (202) 842-7800
Fax: (202) 842-7899
Email: pwillsey@cooley.com
bhughes@cooley.com

Michael G. Rhodes (*pro hac vice*)
101 California Street, 5th Floor
San Francisco, CA 94111-5800
Tel: (415) 693-2000
Fax: (415) 693-2222
Email: rhodesmg@cooley.com

Steven D. McCormick (#1824260)
KIRKLAND & ELLIS LLP
300 North LaSalle
Chicago, IL 60654-3406
Tel: (312) 862-2000
Fax: (312) 862-2200
Email: smccormick@kirkland.com

Counsel for Facebook, Inc.

CERTIFICATE OF SERVICE

The undersigned, an attorney, hereby certifies that he served the foregoing **DEFENDANT FACEBOOK, INC.'S LOCAL RULE 56 STATEMENT OF UNDISPUTED MATERIAL FACTS IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT** by means of the Court's CM/ECF System, which causes a true and correct copy of the same to be served electronically on all CM/ECF registered counsel of record, on January 31, 2013.

Dated: January 31, 2013

/s/Brendan J. Hughes
Brendan J. Hughes (*pro hac vice*)
COOLEY LLP
1299 Pennsylvania Ave., NW Suite 700
Washington, DC 20004-2400
Tel: (202) 842-7800
Fax: (202) 842-7899
Email: bhughes@cooley.com