

# EXHIBIT

31

1 THOMAS R. FALLON

**CERTIFIED COPY**

2 IN THE UNITED STATES DISTRICT COURT

3 FOR THE NORTHERN DISTRICT OF ILLINOIS

4 EASTERN DIVISION

5 -----  
6 TIMELINES, INC.,

7 Plaintiff,

8 -vs-

Case No. 11-CV-06867

9 FACEBOOK, INC.,

10 Defendant.

11 -----  
12  
13  
14 Examination of THOMAS R. FALLON, taken at  
15 the instance of the Defendant, under and pursuant to the  
16 Federal Rules of Civil Procedure, before  
17 JESSICA R. WAACK, Certified Realtime Reporter, Registered  
18 Diplomate Reporter, Certified Shorthand Reporter and  
19 Notary Public in and for the State of Wisconsin, at  
20 735 North Water Street, Milwaukee, Wisconsin, on Tuesday,  
21 September 25, 2012, commencing at 1:29 p.m. and concluding  
22 at 2:07 p.m.

23  
24 Job No. 53573

25

1 THOMAS R. FALLON

2 said, is that you guys? And he said, no, it's  
3 not.

4 Q But you hadn't -- okay. Sorry. Strike that.

5 What do you mean by, "Is that you guys?"  
6 You just asked him, "Is that you guys?"

7 A Yeah, he had talked to me previously about this  
8 new thing that he had called Timelines. Sometime  
9 after six months, three months, whatever it was,  
10 Facebook coming out with something called  
11 Timelines. And I said, hey, they're using your  
12 thing. Did you guys hook up with Facebook? And  
13 he said no.

14 Q And what do you mean by, "Did you guys hook up  
15 with Facebook?"

16 A I thought maybe they sold their service to  
17 Facebook.

18 Q And then other than Mr. Armour saying no, did he  
19 have any response?

20 A I'm sure he did, yes. I don't recall what it was.  
21 But he was very emphatic saying it wasn't him, and  
22 he wasn't happy about it.

23 Q Did he express to you why he wasn't happy about  
24 it?

25 A No. I had assumptions on my part, but, no, he

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THOMAS R. FALLON

STATE OF WISCONSIN )

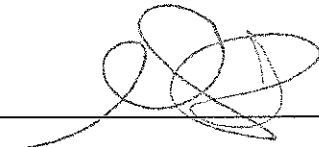
) SS:

COUNTY OF MILWAUKEE )

I, JESSICA R. WAACK, a Certified  
Realtime Reporter, Registered Diplomate Reporter,  
Certified Shorthand Reporter and Notary Public in and  
for the State of Wisconsin, do hereby certify that the  
above examination of THOMAS R. FALLON was recorded by  
me on September 25, 2012, and reduced to writing under  
my personal direction.

I further certify that I am not a  
relative or employee or attorney or counsel of any of  
the parties, or a relative or employee of such attorney  
or counsel, or financially interested directly or  
indirectly in this action.

In witness whereof I have hereunder set  
my hand and affixed my seal of office at Milwaukee,  
Wisconsin, on September 26, 2012.



Notary Public

In and for the State of Wisconsin

My Commission Expires: September 1, 2013.

# **EXHIBIT**

**32**

Redacted

**From:** Facebook [mailto:notifications+f\_444ozy@facebookmail.com]  
**Sent:** Saturday, March 03, 2012 3:48 AM  
**To:** Brian Hand  
**Subject:** Tayyab Tanvir shared a link on Timelines's Wall.

facebook

**Tayyab shared a link on Timelines's Wall.**

timeline sucks

[https://www.facebook.com/photo.php?fbid=3072898176450609&set=a.247177028679321\\_591923471236286843318type=t](https://www.facebook.com/photo.php?fbid=3072898176450609&set=a.247177028679321_591923471236286843318type=t)

Wall Photos:

To see Timelines's Wall, follow the link below:

[http://www.facebook.com/timeline%2Fposts%3F245066599206296mid=5bbe610629efc09a4e5da63a8bocid=125w030&n\\_m=briandhand%40gmail.com](http://www.facebook.com/timeline%2Fposts%3F245066599206296mid=5bbe610629efc09a4e5da63a8bocid=125w030&n_m=briandhand%40gmail.com)

Thanks,  
The Facebook Team

This message was sent to [briandhand@gmail.com](mailto:briandhand@gmail.com). If you don't want to receive these emails from Facebook in the future, please click: [unsubscribe](#).  
Facebook, Inc. Attention: Department 415 P.O. Box 10005 Palo Alto CA 94302



T0000273

Redacted

**From:** Facebook [mailto:notification+f\_444ozy@facebookmail.com]  
**Sent:** Saturday, March 03, 2012 5:58 AM  
**To:** Brian Hand  
**Subject:** Midou Belhadj posted on Timelines's Wall

facebook



**Midou Belhadj posted on Timelines's Wall**

كيف تحصل على اليوميات الجديدة في الفيس بوك

Reply to this email to comment on this Wall post.

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T0000274

Redacted

**From:** Facebook [mailto:notification+f\_444ozy@facebookmail.com]  
**Sent:** Saturday, March 03, 2012 8:05 AM  
**To:** Brian Hand  
**Subject:** Steven Marketoff posted on Timelines's Wall

facebook



**Steven Marketoff posted on Timelines's Wall**

"Remove this timeline from account This is time wasting and useless only overloading the page without point ... I don't wanna see and I don't want others to see what happen with me or with my friends from birthday till now. If I need to do this I will speak with them ... This is violation with the main rules.... Remove it..."

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T0000275



Redacted

**From:** Facebook [mailto:notification+f\_444ozy@facebookmail.com]

**Sent:** Friday, February 24, 2012 9:53 AM

**To:** Brian Hand

**Subject:** Edward Manuel Arias posted on Timelines's Wall

facebook



**Edward Manuel Arias posted on Timelines's Wall**

"no me gusta el Facebook Biografia"

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T0000276

Redacted

**From:** Facebook [mailto:notification+f\_444ozy@facebookmail.com]  
**Sent:** Thursday, February 23, 2012 11:39 AM  
**To:** Brian Hand  
**Subject:** Anna Deane posted on Timelines's Wall

facebook



**Anna Deane posted on Timelines's Wall**

"how do I get this off of my facebook, it has screwed everything up "

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T0000277

Redacted

Begin forwarded message:

**From:** Mr Andrew Stanley Robinson <[arobins3@gardner-webb.edu](mailto:arobins3@gardner-webb.edu)>

**Date:** December 21, 2011 11:24:22 AM CST

**To:** "[feedback@timelines.com](mailto:feedback@timelines.com)" <[feedback@timelines.com](mailto:feedback@timelines.com)>

**Subject:** help

Timeline, I am having trouble with the new account layout on facebook. How can I take timeline off my profile, and go back to the old facebook layout? Thanks for the help

T0000282

Redacted

----- Forwarded message -----

From: Pam Cole  
Date: Thursday, September 22, 2011  
Subject: Timeline  
To: Geoff Buesing <[geoff@geoffbuesing.com](mailto:geoff@geoffbuesing.com)>

Hey Geoff

Saw that Facebook is using timeline snow. Is this your timelines?

How are you and Becca doing anyway?

Pam

T0000298

Redacted

**From:** Jim McLean [mailto:harmonicopywriter@gmail.com]  
**Sent:** Saturday, October 01, 2011 5:45 PM  
**To:** brianehand@gmail.com  
**Subject:** F8 Developers Conference 2011

Just curious if this is your Timelines? I haven't finished watching past Andy from SNL.  
Stephen is coming in for Thanksgiving, btw

J

<https://f8.facebook.com/>

T0000299

Redacted

---

**From:** Facebook [mailto:notification+f\_444ozy@facebookmail.com]  
**Sent:** Sunday, March 18, 2012 10:14 AM  
**To:** Brian Hand  
**Subject:** Ab Sourav posted on Timelines's Wall

facebook



**Ab Sourav posted on Timelines's Wall**

"I cant get timeline :( i tried but cant. pizz give me solution....."

---

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---

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T0000448

Redacted

**From:** Facebook [mailto:notification+f\_444ozy@facebookmail.com]  
**Sent:** Monday, March 26, 2012 12:34 PM  
**To:** Brian Hand  
**Subject:** Evan Manzanares posted on Timelines's Wall

facebook



**Evan Manzanares** posted on Timelines's Wall

"how do i get a timeline"

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T0000508

Redacted

Begin forwarded message:

**From:** "Facebook" <[notification+1f444ozy@facebookmail.com](mailto:notification+1f444ozy@facebookmail.com)>

**Date:** March 10, 2012 5:40:14 PM CST

**To:** Brian Hand <[brianehand@gmail.com](mailto:brianehand@gmail.com)>

**Subject:** Priscilla Abreu posted on Timelines's Wall

**Reply-To:** Reply to Comment

<[c+246y3qf100000001fvuk0k02ry4w2xy4gc00001ekwfahn000zq40bgoc820j1i@reply.facebook.com](mailto:c+246y3qf100000001fvuk0k02ry4w2xy4gc00001ekwfahn000zq40bgoc820j1i@reply.facebook.com)>

facebook



**Priscilla Abreu posted on Timelines's Wall**

"how the fuck do u take out the timeline ?"

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T0000509



Redacted

**From:** Facebook [mailto:notification+f\_444ozy@facebookmail.com]  
**Sent:** Sunday, March 11, 2012 11:46 PM  
**To:** Brian Hand  
**Subject:** Louie Rodriguez posted on Timelines's Wall

facebook



**Louie Rodriguez posted on Timelines's Wall**

"I hate this stupid timeline design. It's messy, disorganized, and harder to read than the classic. Provide the option to keep the classic."<sup>8</sup>

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T0000510

Redacted

**From:** Facebook [mailto:notification+f\_444ozy@facebookmail.com]  
**Sent:** Saturday, March 24, 2012 6:30 AM  
**To:** Brian Hand  
**Subject:** [Timelines] New message from Sanguine Soma

Conversation between [Timelines](#) and [Sanguine Soma](#)

[how can](#) [Sanguine Soma](#)

5:59am Mar 24

[get](#) how can i get timeline?  
[timeline?](#)



[View Conversation on Facebook](#) · Reply to this email to message Sanguine Soma.

T0000511

Redacted

From: Gladys Alvarado [mailto:gladys.alvarado20@gmail.com]  
Sent: Saturday, April 28, 2012 3:36 AM  
To: feedback@timelines.com  
Subject: [Timelines Feedback]

HOW CAN I HAVE MY FACE BOOK WITHOUT TIME LINE PLEASE HELP I LIKE MY OLF FACE BOOK  
FACE

5/1/2012

T0000885

Redacted

From: Teresa [mailto:tacie64@yahoo.com]  
Sent: Monday, April 16, 2012 2:19 PM  
To: feedback@timelines.com  
Subject: just a simple person

it should be my choice!  
you may be building something wonderful for some but every one is  
different and may want something different. just let me have a choice. I  
don't tell you how your page has to look. Give me options.  
Thank You  
Teresa

Redacted

----- Forwarded message -----

From: Chen Advincula <[chenadvincula@yahoo.com](mailto:chenadvincula@yahoo.com)>

Date: Fri, Apr 6, 2012 at 4:51 AM

Subject: can i hab timeline on my facebook account?

To: "[feedback@timelines.com](mailto:feedback@timelines.com)" <[feedback@timelines.com](mailto:feedback@timelines.com)>

5/1/2012

T0000887

Redacted

**From:** Facebook [mailto:notification+f\_444ozy@facebookmail.com]  
**Sent:** Saturday, March 31, 2012 2:56 AM  
**To:** Brian Hand  
**Subject:** Cody William Skan posted on Timelines's Wall

facebook



**Cody William Skan posted on Timelines's Wall**

hello how do i get timeline on my facebook

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5/1/2012

T0000888

Redacted

**From:** Facebook [mailto:notification+f\_444ozy@facebookmail.com]

**Sent:** Sunday, April 01, 2012 4:55 AM

**To:** Brian Hand

**Subject:** Amit Pathak posted on Timelines's Wall

facebook



**Amit Pathak posted on Timelines's Wall**

"What the hell, I am not getting the timeline. Someone help me please....."

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5/1/2012

T0000889

Redacted

**From:** Facebook [mailto:notification+f\_444bzy@facebookmail.com]  
**Sent:** Sunday, April 01, 2012 10:35 AM  
**To:** Brian Hand  
**Subject:** Muhammad Azamuddin posted on Timelines's Wall

facebook



**Muhammad Azamuddin posted on Timelines's Wall**

can u add timeline in my facebook

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5/1/2012

T0000890



-----Original Message-----

From: [cent2005best@myopera.com](mailto:cent2005best@myopera.com) [mailto:[cent2005best@myopera.com](mailto:cent2005best@myopera.com)]

Sent: Wednesday, January 23, 2013 12:51 AM

To: [feedback@timelines.com](mailto:feedback@timelines.com)

Subject: unblock my timeline from my face book account.

Hello,

For three months now, your timeline has block my account, after they ask me to submit verification to verified my name...which i did.....for more than three months now....if i login timeline will bring a page that form has being submitted....and i cant access my account ....i want it unblocked today...

Innocent Ikhayere

--

[cent2005best@myopera.com](mailto:cent2005best@myopera.com)

T0001477

# **EXHIBIT**

**33**

SEARCH

NEWS OPINION MAGAZINE SPORTS ARTS MEDIA FLYBY

ABOUT US ADVERTISING SUBSCRIBE CLASSIFIEDS JOB BOARD

CAMBRIDGE, MA WEATHER: 39F

# Hundreds Register for New Facebook Website

*Facemash creator seeks new reputation with latest online project*

By ALAN J. TABAK, CRIMSON STAFF WRITER

February 09, 2004

81 COMMENTS

EMAIL

PRINT

Like 3.5k

When Mark E. Zuckerberg '06 grew impatient with the creation of an official universal Harvard facebook, he decided to take matters into his own hands.

After about a week of coding, Zuckerberg launched thefacebook.com last Wednesday afternoon. The website combines elements of a standard House face book with extensive profile features that allow students to search for others in their courses, social organizations and Houses.

"Everyone's been talking a lot about a universal face book within Harvard," Zuckerberg said. "I think it's kind of silly that it would take the University a couple of years to get around to it. I can do it better than they can, and I can do it in a week."

As of yesterday afternoon, Zuckerberg said over 650 students had registered use thefacebook.com. He said that he anticipated that 900 students would have joined the site by this morning.

"I'm pretty happy with the amount of people that have been to it so far," he said. "The nature of the site is that each user's experience improves if they can get their friends to join it."

But Director of Residential Computing Kevin S. Davis '98 said that the creation of a Harvard facebook was not as far off as Zuckerberg predicted.

"There is a project internally with computer services to create a facebook," Davis said. "We've been in touch with the Undergraduate Council, and this is a very high priority for the College. We have every intention of completing the facebook by the end of the spring semester."

Davis said that the principle complication with the creation of an official facebook was figuring out how to design an interface so that directory information could not easily be compiled without authorization.

Zuckerberg's site allows people with Harvard e-mail addresses to upload their pictures and personal and academic information. Just as with the popular website Friendster, which Zuckerberg said was a model for his new website, members can search for people according to their interests and can create an online network of friends.

Lisa H. Feigenbaum '04 said that she joined thefacebook.com because it provided an open alternative to the password-protected House facebooks.

"If there was a situation where you needed to identify someone for an organization or a meeting, it would be very helpful," she said.

Zuckerberg said that the most innovative feature of the site is that people can search for other students in their classes so that they can branch out to form friendships and study groups.

"If you're in a class where you don't know anyone and want to ask somebody for help, this is a way to find out the names of people in that class," said thefacebook.com user Roberto C. Acosta '05.

Zuckerberg said that the extensive search capabilities are restricted by a myriad of privacy options for members who do not want everyone to be able to look up their information.

"There are pretty intensive privacy options," he said. "You can limit who can see your information, if you only want current students to see your information, or people in your year, in your house, in your classes. You can limit a search so that only a friend or a friend of a friend can look you up. People have very good control over who can see their information."

Zuckerberg said that he hoped the privacy options would help to restore his reputation following student outrage over facemash.com, a website he created in the fall semester.

Using without permission photos from House facebooks, Facemash juxtaposed the pictures of two random Harvard undergraduates and asked users to judge their physical attractiveness. The website drew the ire of students and administrators alike, and Zuckerberg shut it down within days of the initial launch.

In addition to the privacy options, Zuckerberg added security features to thefacebook.com that he said will ensure that only the owner of a particular Harvard e-mail account can upload information to the website.

When a person registers to join thefacebook.com, a program checks to make sure that the name of the prospective member matches up with the entered e-mail address. Next, a confirmation message is sent to the e-mail account, and the account is finally activated if and when the owner of the account clicks on an encrypted link back to thefacebook.com.

Zuckerberg said that he was also careful to avoid the potential copyright infringement charges that landed him before the Administrative Board after the creation of Facemash.

“Facemash was a joke, it was funny, but at its root it had its problems—not only the idea, but the implementation. It was distributing materials that were Harvard’s. I was very careful with [thefacebook.com] to make sure that people don’t upload copyrighted material,” he said.

Davis said that thefacebook.com is not necessarily in violation of any Harvard rules.

“There’s nothing inherently wrong with a third party site on which students choose to create a personal network,” Davis said. “If there was a third party site on which students uploaded course syllabi or videos, that could potentially become a property issue with the University.”

Zuckerburg said thefacebook.com has no such capabilities and does not violate University rules.

While Zuckerberg promised that thefacebook.com would boast new features by the end of the week, he said that he did not create the website with the intention of generating revenue.

“I’m not going to sell anybody’s e-mail address,” he said. “At one point I thought about making the website so that you could upload a resume too, and for a fee companies could search for Harvard job applicants. But I don’t want to touch that. It would make everything more serious and less fun.”

—Staff writer Alan J. Tabak can be reached at [tabak@fas.harvard.edu](mailto:tabak@fas.harvard.edu).

81 comments

★ 45



Leave a message...

Discussion

Community

Share



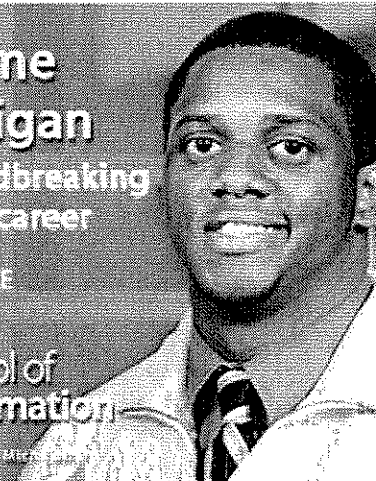
anon • 3 years ago

ha - this will never catch on!

75 ^ | 2 v • Reply • Share

### MOST READ

1. Rethink TFA
2. Shalom
3. As Blizzard Hits, Harvard Copes with MBTA Closings, Staff Shortages
4. HMS Professor Settles in Gender Discrimination Suit
5. Hasty Pudding Roasts Man of the Year Kiefer Sutherland



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school of information  
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### Media



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**UNC**  
KENAN-FLAGLER  
BUSINESS SCHOOL

### Thank You HUDS and FMO!

3 days ago



Jeremy Lin '10  
Inspires Pick-  
Up Players  
Everywhere

7 days ago



Vesey's Goal  
January 05, 2013



MEN'S ICE HOCKEY

**Killorn '12  
Makes NHL  
Debut**



HUDS

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Hits, Harvard  
Copes with  
MBTA  
Closings, Staff  
Shortages**



MEN'S BASKETBALL

**Columbia  
Hands Men's  
Basketball First  
Conference  
Loss**



HASTY PUDDING

THEATRICALS  
**Hasty Pudding  
Roasts Man of  
the Year Kiefer  
Sutherland**

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# **EXHIBIT**

**34**



**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**  
**BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of Application Serial No. 76/658,836  
Filed on April 20, 2006  
For the mark **FACEMAIL**  
Published in the *Official Gazette* on May 15, 2007

Facebook, Inc.,  <p style="text-align:center">Opposer,</p> <p style="text-align:center">v.</p> Callsource, Inc.,  <p style="text-align:center">Applicant.</p>	Opposition No.: _____
---	-----------------------

**NOTICE OF OPPOSITION**

Opposer Facebook, Inc. ("Opposer" or "Facebook"), a corporation organized and existing under the laws of the State of Delaware, believes that it will be damaged by registration of the mark shown in Application Serial No. 76/658,836 and hereby opposes that application, alleging as grounds for its opposition that:

1. Opposer has obtained the necessary extensions of time in which to oppose the challenged trademark following publication on May 15, 2007 in the *Official Gazette*.
2. As is evidenced by the publication of the FACEMAIL mark in the May 15, 2007 *Official Gazette*, Applicant Callsource, Inc. ("Applicant") seeks to register the mark FACEMAIL (the "Proposed Mark") as a trademark in International Class 38 for "communication services, namely, delivering prerecorded messages combining video and audio over a global communications network and communication services, namely, electronic transmission of live messages combining video and audio over a global communications network." Applicant is, upon information and belief, a California Corporation having its principal place of business at 31380 Oak Crest Drive, Westlake Village, CA 91361. Applicant has filed on an intent-to-use basis.

3. Starting more than three years ago, and continuously since then, the FACEBOOK trade name and trademark have been used in interstate and international commerce in connection with a wide range of goods and services, including but not limited to, "providing online chat rooms for registered users for transmission of messages concerning collegiate life, classifieds, virtual community and social networking" in Class 38 and "providing an online directory information service featuring information regarding, and in the nature of, collegiate life, classifieds, virtual community and social networking" in Class 35. We refer to the foregoing services collectively as "the FACEBOOK Services."

4. All of the FACEBOOK Services have been or are being advertised, promoted, marketed, offered, and rendered in connection with Opposer's well known FACEBOOK name, trademarks and service marks. We refer to this family of trademarks and service marks and to Opposer's trade name collectively as the "FACEBOOK Name and Marks."

5. The FACEBOOK Name and Marks have been continuously and widely used, advertised, promoted, marketed, offered and rendered in connection with the FACEBOOK Services for at least 3 years. The well-known use of the FACEBOOK mark in commerce, in connection with various of the FACEBOOK Services, began at least as early as 2004, and has been continuous and uninterrupted ever since then.

6. The FACEBOOK Name and Marks have been the subject of extensive advertising campaigns and the content of endless articles in technology and general media publications over the past 3 years. These advertisements and print publications have been distributed to major markets throughout the world.

7. The level of fame and consumer recognition of the FACEBOOK Name and Marks cannot be disputed. Opposer currently has over 40 million active users, and currently processes 200,000 new registrations for Opposer's services per day. Opposer's website, <Facebook.com>, is the 6<sup>th</sup> most trafficked website on the Internet. As a result of at least 3 years of extensive advertising and use of the FACEBOOK Name and Marks in connection with the

FACEBOOK Services, the FACEBOOK Name and Marks have acquired extensive goodwill, and have come to be immediately identified as the source of the FACEBOOK Services.

8. The FACEBOOK Name and Marks are famous. The FACEBOOK Name and Marks are recognized by virtually every consumer familiar with the online social networking industry in the United States and throughout much of the rest of the world.

9. Opposer's rights in the FACEBOOK Name and Marks are further evidenced by its ownership of numerous United States Trademark registrations and applications, including the following: U.S. Registration No. 3041791; U.S. Registration No. 3122052; U.S. Application Serial No. 78920322; U.S. Application Serial No. 78962629; U.S. Application Serial No. 77125103; U.S. Application Serial No. 77039123; and U.S. Application Serial No. 77189479, all for the mark FACEBOOK.

The registrations listed above are in full force and effect

10. There is no issue as to priority. Opposer filed for and obtained its FACEBOOK registrations prior to the April 20, 2006 filing date of Applicant's FACEMAIL application, which is the subject of this proceeding. Further, Opposer's first use of the FACEBOOK Name and Marks predates the April 20, 2006 filing date of Applicant's FACEMAIL application, which is the subject of this proceeding. FACEBOOK has been using the trademark FACEBOOK as a service mark and trade name for its services since 2004.

11. The Proposed Mark is confusingly similar to Opposer's FACEBOOK Name and Marks when used in connection with Applicant's services, as identified in Serial No. 76/658,836. Thus, Applicant's use of the Proposed Mark is likely to cause confusion, mistake or deception in the minds of prospective purchasers as to the origin, source, sponsorship or association of Applicant's services, thereby causing loss, damage and injury to Opposer.

12. Consumers familiar with the FACEBOOK Name and Marks are likely to mistakenly believe that Applicant's services are sponsored, authorized, associated with or otherwise approved by Opposer due to the confusing similarity between the Proposed Mark and Opposer's FACEBOOK Name and Marks. Deficiencies or faults in the quality of Applicant's

services are likely to reflect negatively upon, tarnish, and seriously injure the reputation which Opposer has established for services marketed under the FACEBOOK Name and Marks. This confusion is likely to result in loss of revenues to Opposer and damage to Opposer's reputation.

13. Applicant's use of the Proposed Mark does or is likely to falsely suggest a relationship between Applicant's services and Opposer's services. Such use of the Proposed Mark is likely to cause confusion, mistake or deception with respect to the source or sponsorship of Applicant's services. Such use is likely to cause an increase in sales by Applicant due to consumers' mistaken belief that Opposer is the source or sponsor of Applicant's services, resulting in ill-gotten gains by Applicant. Applicant's use of the Proposed Mark is therefore likely to result in Applicant's trading off and benefiting from the goodwill associated with Opposer, resulting in ill-gotten gains by Applicant.

14. For the foregoing reasons, the registration sought by Applicant is contrary to the provisions of Section 2 of the Lanham Act, and Opposer would be damaged thereby.

15. In the unlikely event that any consumers may not be confused into believing that Applicant's services originate from or are related to those of Opposer, Applicant's use of the Proposed Mark would diminish the distinctive quality of Opposer's famous FACEBOOK Name and Marks as they relate to the FACEBOOK Services, thereby causing dilution of Opposer's famous FACEBOOK Name and Marks in violation of Lanham Act Section 43, and in violation of Opposer's rights under state dilution and unfair competition law. As a result, the ability of Opposer's FACEBOOK Name and Marks to identify Opposer's FACEBOOK Services is weakened, thereby causing loss, damage and injury to Opposer.

16. For the foregoing reasons, the registration sought by Applicant is contrary to the provisions of Section 43 of the Lanham Act, and Opposer would be damaged thereby.

17. In order to protect the public against confusion and deceit, and to protect Opposer's famous marks from infringement, dilution, and unfair competition, the Proposed Mark must not be registered.

WHEREFORE, Opposer respectfully prays for the following:

a. a finding that FACEBOOK has priority as to Applicant's application to register the FACEMAIL mark in connection with website message and social introduction services;

b. a finding that Applicant's proposed FACEMAIL mark is likely to cause confusion with FACEBOOK's family of FACEBOOK marks;

c. a finding that Applicant's proposed FACEMAIL mark dilutes FACEBOOK's family of FACEBOOK marks; and

d. that the opposition be sustained and Application Serial No. 76/658,836 and the mark therein sought for the services identified therein be denied and refused.

This Notice is submitted electronically, together with the requisite \$300 filing fee. Please charge any additional fees required to our Deposit Account No. 08-1645 (Our Reference No. 41446-5000) as necessary.

Dated: September 12, 2007

Respectfully submitted,

HELLER BHRMAN LLP

By: 

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Attorneys for Opposer  
FACEBOOK, Inc.

# **EXHIBIT**

**35**

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**  
**BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of Application Serial No. 78/839,940  
Filed on March 17, 2006  
For the mark **BLACKFACES**  
Published in the *Official Gazette* on May 15, 2007

Facebook, Inc.,  <p style="text-align:center">Opposer,</p> <p style="text-align:center">v.</p> Spartan Brands Inc.,  <p style="text-align:center">Applicant.</p>	
--	--

Opposition No.: \_\_\_\_\_

**NOTICE OF OPPOSITION**

Opposer Facebook, Inc. ("Opposer" or "Facebook"), a corporation organized and existing under the laws of the State of Delaware, believes that it will be damaged by registration of the mark shown in Application Serial No. 78/839,940 and hereby opposes that application, alleging as grounds for its opposition that:

1. Opposer has obtained the necessary extensions of time in which to oppose the challenged trademark following publication on May 15, 2007 in the *Official Gazette*.
2. As is evidenced by the publication of the BLACKFACES mark in the May 15, 2007 *Official Gazette*, Applicant Spartan Brands, Inc. ("Applicant") seeks to register the mark BLACKFACES (the "Proposed Mark") as a trademark in International Class 38 for "Providing website message boards in the field of communication for the purposes of introduction of individuals," and International Class 45 for "Providing on-line social introduction services for individuals." Applicant is, upon information and belief, a New York Corporation having its principal place of business at Suite 601, 220 East 23rd Street, New York, NY 10010. Applicant has filed on an intent-to-use basis.

3. Starting more than three years ago, and continuously since then, the FACEBOOK trade name and trademark have been used in interstate and international commerce in connection with a wide range of goods and services, including but not limited to, "providing online chat rooms for registered users for transmission of messages concerning collegiate life, classifieds, virtual community and social networking" in Class 38 and "providing an online directory information service featuring information regarding, and in the nature of, collegiate life, classifieds, virtual community and social networking" in Class 35. We refer to the foregoing services collectively as "the FACEBOOK Services."

4. All of the FACEBOOK Services have been or are being advertised, promoted, marketed, offered and rendered in connection with Opposer's well known FACEBOOK name, trademarks and service marks. We refer to this family of trademarks and service marks and to Opposer's trade name collectively as the "FACEBOOK Name and Marks."

5. The FACEBOOK Name and Marks have been continuously and widely used, advertised, promoted, marketed, offered and rendered in connection with the FACEBOOK Services for at least 3 years. The well-known use of the FACEBOOK mark in commerce, in connection with various of the FACEBOOK Services, began at least as early as 2004, and has been continuous and uninterrupted ever since then.

6. The FACEBOOK Name and Marks have been the subject of extensive advertising campaigns and the content of endless articles in technology and general media publications over the past 3 years. These advertisements and print publications have been distributed to major markets throughout the world.

7. The level of fame and consumer recognition of the FACEBOOK Name and Marks cannot be disputed. Opposer currently has over 40 million active users, and currently processes 200,000 new registrations for Opposer's services per day. Opposer's website, <Facebook.com>, is the 6<sup>th</sup> most trafficked website on the Internet. As a result of at least 3 years of extensive advertising and use of the FACEBOOK Name and Marks in connection with online social networking services, the FACEBOOK Name and Marks have acquired extensive



goodwill, and have come to be immediately identified as the source of the FACEBOOK Services.

8. The FACEBOOK Name and Marks are famous. The FACEBOOK Name and Marks are recognized by virtually every consumer familiar with the online social networking industry in the United States and throughout much of the rest of the world.

9. Opposer's rights in the FACEBOOK Name and Marks are further evidenced by its ownership of numerous United States Trademark registrations and applications, including the following: U.S. Registration No. 3041791; U.S. Registration No. 3122052; U.S. Application Serial No. 78920322; U.S. Application Serial No. 78962629; U.S. Application Serial No. 77125103; U.S. Application Serial No. 77039123; and U.S. Application Serial No. 77189479, all for the mark FACEBOOK.

The registrations listed above are in full force and effect

10. There is no issue as to priority. Opposer filed for and obtained its FACEBOOK registrations prior to the March 17, 2006 filing date of Applicant's BLACKFACES application, which is the subject of this proceeding. Further, Opposer's first use of the FACEBOOK Name and Marks predates the March 17, 2006 filing date of Applicant's BLACKFACES application, which is the subject of this proceeding. FACEBOOK has been using the trademark FACEBOOK as a service mark and trade name for its services since 2004.

11. The Proposed Mark is confusingly similar to Opposer's FACEBOOK Name and Marks when used in connection with Applicant's services, as identified in Serial No. 78/839,940. Thus, Applicant's use of the Proposed Mark is likely to cause confusion, mistake or deception in the minds of prospective purchasers as to the origin, source, sponsorship or association of Applicant's services, thereby causing loss, damage and injury to Opposer.

12. Consumers familiar with the FACEBOOK Name and Marks are likely to mistakenly believe that Applicant's services are sponsored, authorized, associated with or otherwise approved by Opposer due to the confusing similarity between the Proposed Mark and Opposer's FACEBOOK Name and Marks. Deficiencies or faults in the quality of Applicant's

social introduction services are likely to reflect negatively upon, tarnish, and seriously injure the reputation which Opposer has established for services marketed under the FACEBOOK Name and Marks. This confusion is likely to result in loss of revenues to Opposer and damage to Opposer's reputation.

13. Applicant's use of the Proposed Mark does or is likely to falsely suggest a relationship between Applicant's social introduction services and Opposer's services. Such use of the Proposed Mark is likely to cause confusion, mistake or deception with respect to the source or sponsorship of Applicant's social introduction services. Such use is likely to cause an increase in sales by Applicant due to consumers' mistaken belief that Opposer is the source or sponsor of Applicant's services, resulting in ill-gotten gains by Applicant. Applicant's use of the Proposed Mark is therefore likely to result in Applicant's trading off and benefiting from the goodwill associated with Opposer, resulting in ill-gotten gains by Applicant.

14. For the foregoing reasons, the registration sought by Applicant is contrary to the provisions of Section 2 of the Lanham Act, and Opposer would be damaged thereby.

15. In the unlikely event that any consumers may not be confused into believing that Applicant's services originate from or are related to those of Opposer, Applicant's use of the Proposed Mark would diminish the distinctive quality of Opposer's famous FACEBOOK Name and Marks as they relate to the FACEBOOK Services, thereby causing dilution of Opposer's famous FACEBOOK Name and Marks in violation of Lanham Act Section 43(a), and in violation of Opposer's rights under state dilution and unfair competition law. As a result, the ability of Opposer's FACEBOOK Name and Marks to identify Opposer's FACEBOOK Services is weakened, thereby causing loss, damage and injury to Opposer.

16. For the foregoing reasons, the registration sought by Applicant is contrary to the provisions of Section 43 of the Lanham Act, and Opposer would be damaged thereby.

17. In order to protect the public against confusion and deceit, and to protect Opposer's famous marks from infringement, dilution, and unfair competition, the Proposed Mark must not be registered.

WHEREFORE, Opposer respectfully prays for the following:

- a. a finding that FACEBOOK has priority as to Applicant's application to register the BLACKFACES mark in connection with website message and social introduction services;
- b. a finding that Applicant's proposed BLACKFACES mark is likely to cause confusion with FACEBOOK's family of FACEBOOK marks;
- c. a finding that Applicant's proposed BLACKFACES mark dilutes FACEBOOK's family of FACEBOOK marks; and
- d. that the opposition be sustained and Application Serial No. 78/839,940 and the mark therein sought for the services identified therein be denied and refused.

This Notice is submitted electronically, together with the requisite \$300 filing fee. Please charge any additional fees required to our Deposit Account No. 08-1645 (Our Reference No. 41446-5000) as necessary.

Dated: September 12, 2007

Respectfully submitted,

HELLER EHRMAN LLP

By: 

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# **EXHIBIT**

**36**

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**  
**BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of Application Serial No. 77/031,782  
Filed on October 29, 2006  
For the mark **DWC FACES**  
Published in the *Official Gazette* on May 22, 2007

Facebook, Inc.,

Opposer,

v.

Diane K. Danielson,

Applicant.

Opposition No.: \_\_\_\_\_

**NOTICE OF OPPOSITION**

Opposer Facebook, Inc. ("Opposer" or "Facebook"), a corporation organized and existing under the laws of the State of Delaware, believes that it will be damaged by registration of the mark shown in Application Serial No. 77/031,782 and hereby opposes that application, alleging as grounds for its opposition that:

1. Opposer has obtained the necessary extensions of time in which to oppose the challenged trademark following publication on May 22, 2007 in the *Official Gazette*.
2. As is evidenced by the publication of the DWC FACES mark in the May 22, 2007 *Official Gazette*, Applicant Diane K. Danielson ("Applicant") seeks to register the mark DWC FACES (the "Proposed Mark") as a trademark in International Class 35 for "providing an on-line commercial information directory on the internet." Applicant is, upon information and belief, an individual having her principal place of business at 756 Jerusalem Road #5, Cohasset, MA 02025. Applicant has claimed April 1, 2006 as the date of first use of the Proposed Mark.
3. Starting more than three years ago, and continuously since then, the FACEBOOK trade name and trademark have been used in interstate and international commerce in connection with a wide range of goods and services, including but not limited to, "providing online chat

rooms for registered users for transmission of messages concerning collegiate life, classifieds, virtual community and social networking” in Class 38 and “providing an online directory information service featuring information regarding, and in the nature of, collegiate life, classifieds, virtual community and social networking” in Class 35. We refer to the foregoing services collectively as “the FACEBOOK Services.”

4. All of the FACEBOOK Services have been or are being advertised, promoted, marketed, offered and rendered in connection with Opposer’s well known FACEBOOK name, trademarks and service marks. We refer to this family of trademarks and service marks and to Opposer’s trade name collectively as the “FACEBOOK Name and Marks.”

5. The FACEBOOK Name and Marks have been continuously and widely used, advertised, promoted, marketed, offered and rendered in connection with the FACEBOOK Services for at least 3 years. The well-known use of the FACEBOOK mark in commerce, in connection with various of the FACEBOOK Services, began at least as early as 2004, and has been continuous and uninterrupted ever since then.

6. The FACEBOOK Name and Marks have been the subject of extensive advertising campaigns and the content of endless articles in technology and general media publications over the past 3 years. These advertisements and print publications have been distributed to major markets throughout the world.

7. The level of fame and consumer recognition of the FACEBOOK Name and Marks cannot be disputed. Opposer currently has over 40 million active users, and currently processes 200,000 new registrations for Opposer’s services per day. Opposer’s website, <Facebook.com>, is the 6<sup>th</sup> most trafficked website on the Internet. As a result of at least 3 years of extensive advertising and use of the FACEBOOK Name and Marks in connection with the FACEBOOK Services, the FACEBOOK Name and Marks have acquired extensive goodwill, and have come to be immediately identified as the source of the FACEBOOK Services.

8. The FACEBOOK Name and Marks are famous. The FACEBOOK Name and Marks are recognized by virtually every consumer familiar with the online social networking industry in the United States and throughout much of the rest of the world.

9. Opposer's rights in the FACEBOOK Name and Marks are further evidenced by its ownership of numerous United States Trademark registrations and applications, including the following: U.S. Registration No. 3041791; U.S. Registration No. 3122052; U.S. Application Serial No. 78920322; U.S. Application Serial No. 78962629; U.S. Application Serial No. 77125103; U.S. Application Serial No. 77039123; and U.S. Application Serial No. 77189479, all for the mark FACEBOOK.

The registrations listed above are in full force and effect

10. There is no issue as to priority. Opposer filed for and obtained its FACEBOOK registrations prior to the April 1, 2006 first use date of Applicant's DWC FACES application, which is the subject of this proceeding. Further, Opposer's first use of the FACEBOOK Name and Marks predates the April 1, 2006 first use date of Applicant's DWC FACES application, which is the subject of this proceeding. FACEBOOK has been using the trademark FACEBOOK as a service mark and trade name for its services since 2004.

11. The Proposed Mark is confusingly similar to Opposer's FACEBOOK Name and Marks when used in connection with Applicant's services, as identified in Serial No. 77/031,782. Thus, Applicant's use of the Proposed Mark is likely to cause confusion, mistake or deception in the minds of prospective purchasers as to the origin, source, sponsorship or association of Applicant's services, thereby causing loss, damage and injury to Opposer.

12. Consumers familiar with the FACEBOOK Name and Marks are likely to mistakenly believe that Applicant's services are sponsored, authorized, associated with or otherwise approved by Opposer due to the confusing similarity between the Proposed Mark and Opposer's FACEBOOK Name and Marks. Deficiencies or faults in the quality of Applicant's services are likely to reflect negatively upon, tarnish, and seriously injure the reputation which

Opposer has established for services marketed under the FACEBOOK Name and Marks. This confusion is likely to result in loss of revenues to Opposer and damage to Opposer's reputation.

13. Applicant's use of the Proposed Mark does or is likely to falsely suggest a relationship between Applicant's services and Opposer's services. Such use of the Proposed Mark is likely to cause confusion, mistake or deception with respect to the source or sponsorship of Applicant's services. Such use is likely to cause an increase in sales by Applicant due to consumers' mistaken belief that Opposer is the source or sponsor of Applicant's services, resulting in ill-gotten gains by Applicant. Applicant's use of the Proposed Mark is therefore likely to result in Applicant's trading off and benefiting from the goodwill associated with Opposer, resulting in ill-gotten gains by Applicant.

14. For the foregoing reasons, the registration sought by Applicant is contrary to the provisions of Section 2 of the Lanham Act, and Opposer would be damaged thereby.

15. In the unlikely event that any consumers may not be confused into believing that Applicant's services originate from or are related to those of Opposer, Applicant's use of the Proposed Mark would diminish the distinctive quality of Opposer's famous FACEBOOK Name and Marks as they relate to the FACEBOOK Services, thereby causing dilution of Opposer's famous FACEBOOK Name and Marks in violation of Lanham Act Section 43, and in violation of Opposer's rights under state dilution and unfair competition law. As a result, the ability of Opposer's FACEBOOK Name and Marks to identify Opposer's FACEBOOK Services is weakened, thereby causing loss, damage and injury to Opposer.

16. For the foregoing reasons, the registration sought by Applicant is contrary to the provisions of Section 43 of the Lanham Act, and Opposer would be damaged thereby.

17. In order to protect the public against confusion and deceit, and to protect Opposer's famous marks from infringement, dilution, and unfair competition, the Proposed Mark must not be registered.

WHEREFORE, Opposer respectfully prays for the following:



- a. a finding that FACEBOOK has priority as to Applicant's application to register the DWC FACES mark in connection with online information directory services;
- b. a finding that Applicant's proposed DWC FACES mark is likely to cause confusion with FACEBOOK's family of FACEBOOK marks;
- c. a finding that Applicant's proposed DWC FACES mark dilutes FACEBOOK's family of FACEBOOK marks; and
- d. that the opposition be sustained and Application Serial No. 77/031,782 and the mark therein sought for the services identified therein be denied and refused.

This Notice is submitted electronically, together with the requisite \$300 filing fee. Please charge any additional fees required to our Deposit Account No. 08-1645 (Our Reference No. 41446-5000) as necessary.

Dated: September 19, 2007

Respectfully submitted,

HELLER EHRMAN LLP

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Attorneys for Opposer  
FACEBOOK, Inc.

# **EXHIBIT**

**37**

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**  
**BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of Application Serial No. 77/030,944  
Filed on October 27, 2006  
For the mark FACEPLACE@ORU  
Published in the *Official Gazette* on May 29, 2007

Facebook, Inc.;

Opposer,

v.

Oral Roberts University,

Applicant.

Opposition No.: \_\_\_\_\_

**NOTICE OF OPPOSITION**

Opposer Facebook, Inc. ("Opposer" or "Facebook"), a corporation organized and existing under the laws of the State of Delaware, believes that it will be damaged by registration of the mark shown in Application Serial No. 77/030,944 and hereby opposes that application, alleging as grounds for its opposition that:

1. Opposer has obtained the necessary extensions of time in which to oppose the challenged trademark following publication on May 29, 2007 in the *Official Gazette*.

2. As is evidenced by the publication of the FACEPLACE@ORU mark in the May 29, 2007 *Official Gazette*, Applicant Oral Roberts University ("Applicant") seeks to register the mark FACEPLACE@ORU (the "Proposed Mark") as a trademark in International Class 42 for "Computer Services, Namely, Hosting Online Web Facilities For Others For Organizing And Conducting Online Meetings, Gatherings, And Interactive Discussions; And Computer Services In The Nature Of Customized Web Pages Featuring User-Defined Information, Personal Profiles And Information."

Applicant is, upon information and belief, an Oklahoma Non-Profit Corporation having

its principal place of business at 7777 South Lewis Avenue, Tulsa, OK, 74114.

Applicant has claimed a date of first use of May 2006.

3. Starting more than three years ago, and continuously since then, the FACEBOOK trade name and trademark have been used in interstate and international commerce in connection with a wide range of goods and services, including but not limited to, "providing online chat rooms for registered users for transmission of messages concerning collegiate life, classifieds, virtual community and social networking" in Class 38 and "providing an online directory information service featuring information regarding, and in the nature of, collegiate life, classifieds, virtual community and social networking" in Class 35. We refer to the foregoing services collectively as "the FACEBOOK Services."

4. All of the FACEBOOK Services have been or are being advertised, promoted, marketed, offered and rendered in connection with Opposer's well known FACEBOOK name, trademarks and service marks. We refer to this family of trademarks and service marks and to Opposer's trade name collectively as the "FACEBOOK Name and Marks."

5. The FACEBOOK Name and Marks have been continuously and widely used, advertised, promoted, marketed, offered and rendered in connection with the FACEBOOK Services for at least 3 years. The well-known use of the FACEBOOK mark in commerce, in connection with various of the FACEBOOK Services, began at least as early as 2004, and has been continuous and uninterrupted ever since then.

6. The FACEBOOK Name and Marks have been the subject of extensive advertising campaigns and the content of endless articles in technology and general media publications over the past 3 years. These advertisements and print publications have been distributed to major markets throughout the world.

7. The level of fame and consumer recognition of the FACEBOOK Name and Marks cannot be disputed. Opposer currently has over 40 million active users, and

currently processes 200,000 new registrations for Opposer's services per day. Opposer's website, <Facebook.com>, is the 6<sup>th</sup> most trafficked website on the Internet. As a result of at least 3 years of extensive advertising and use of the FACEBOOK Name and Marks in connection with online social networking services, the FACEBOOK Name and Marks have acquired extensive goodwill, and have come to be immediately identified as the source of the FACEBOOK Services.

8. The FACEBOOK Name and Marks are famous. The FACEBOOK Name and Marks are recognized by virtually every consumer familiar with the online social networking industry in the United States and throughout much of the rest of the world.

9. Opposer's rights in the FACEBOOK Name and Marks are further evidenced by its ownership of numerous United States Trademark registrations and applications, including the following: U.S. Registration No. 3041791; U.S. Registration No. 3122052; U.S. Application Serial No. 78920322; U.S. Application Serial No. 78962629; U.S. Application Serial No. 77125103; U.S. Application Serial No. 77039123; and U.S. Application Serial No. 77189479, all for the mark FACEBOOK.

The registrations listed above are in full force and effect

10. There is no issue as to priority. Opposer filed for and obtained its FACEBOOK registrations prior to the May 2006 first use date of Applicant's FACEPLACE@ORU application, which is the subject of this proceeding. Further, Opposer's first use of the FACEBOOK Name and Marks predates the May 2006 first use date of Applicant's FACEPLACE@ORU application, which is the subject of this proceeding. FACEBOOK has been using the trademark FACEBOOK as a service mark and trade name for its services since 2004.

11. The Proposed Mark is confusingly similar to Opposer's FACEBOOK Name and Marks when used in connection with Applicant's services, as identified in Serial No. 77/030,944. Thus, Applicant's use of the Proposed Mark is likely to cause confusion, mistake or deception in the minds of prospective purchasers as to the origin,

source, sponsorship or association of Applicant's services, thereby causing loss, damage and injury to Opposer.

12. Consumers familiar with the FACEBOOK Name and Marks are likely to mistakenly believe that Applicant's services are sponsored, authorized, associated with or otherwise approved by Opposer due to the confusing similarity between the Proposed Mark and Opposer's FACEBOOK Name and Marks. Deficiencies or faults in the quality of Applicant's social introduction services are likely to reflect negatively upon, tarnish, and seriously injure the reputation which Opposer has established for services marketed under the FACEBOOK Name and Marks. This confusion is likely to result in loss of revenues to Opposer and damage to Opposer's reputation.

13. Applicant's use of the Proposed Mark does or is likely to falsely suggest a relationship between Applicant's social introduction services and Opposer's services. Such use of the Proposed Mark is likely to cause confusion, mistake or deception with respect to the source or sponsorship of Applicant's social introduction services. Such use is likely to cause an increase in sales by Applicant due to consumers' mistaken belief that Opposer is the source or sponsor of Applicant's services, resulting in ill-gotten gains by Applicant. Applicant's use of the Proposed Mark is therefore likely to result in Applicant's trading off and benefiting from the goodwill associated with Opposer, resulting in ill-gotten gains by Applicant.

14. For the foregoing reasons, the registration sought by Applicant is contrary to the provisions of Section 2 of the Lanham Act, and Opposer would be damaged thereby.

15. In the unlikely event that any consumers may not be confused into believing that Applicant's services originate from or are related to those of Opposer, Applicant's use of the Proposed Mark would diminish the distinctive quality of Opposer's famous FACEBOOK Name and Marks as they relate to the FACEBOOK Services, thereby causing dilution of Opposer's famous FACEBOOK Name and Marks in

violation of Lanham Act Section 43, and in violation of Opposer's rights under state dilution and unfair competition law. As a result, the ability of Opposer's FACEBOOK Name and Marks to identify Opposer's FACEBOOK Services is weakened, thereby causing loss, damage and injury to Opposer.

16. For the foregoing reasons, the registration sought by Applicant is contrary to the provisions of Section 43 of the Lanham Act, and Opposer would be damaged thereby.

17. In order to protect the public against confusion and deceit, and to protect Opposer's famous marks from infringement, dilution, and unfair competition, the Proposed Mark must not be registered.

WHEREFORE, Opposer respectfully prays for the following:

a. a finding that FACEBOOK has priority as to Applicant's application to register the FACEPLACE@ORU mark in connection with website message and social introduction services;

b. a finding that Applicant's proposed FACEPLACE@ORU mark is likely to cause confusion with FACEBOOK's family of FACEBOOK marks;

c. a finding that Applicant's proposed FACEPLACE@ORU mark dilutes FACEBOOK's family of FACEBOOK marks; and

d. that the opposition be sustained and Application Serial No. 77/030,944 and the mark therein sought for the services identified therein be denied and refused.

This Notice is submitted electronically, together with the requisite \$300 filing fee. Please charge any additional fees required to our Deposit Account No. 08-1645 (Our Reference No. 41446-5000) as necessary.

Dated: September 25, 2007

Respectfully submitted,

HELLER EHRMAN LLP

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Attorneys for Opposer  
FACEBOOK, Inc.

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# **EXHIBIT**

**38**

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**  
**BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of Application Serial No. 77/139,606  
Filed on March 24, 2007  
For the mark **DATEBOOK**  
Published in the *Official Gazette* on September 25, 2007

<p>Facebook, Inc.,</p> <p style="text-align:center">Opposer,</p> <p style="text-align:center">v.</p> <p>Allison N. Witherspoon,</p> <p style="text-align:center">Applicant.</p>
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Opposition No.: \_\_\_\_\_

**NOTICE OF OPPOSITION**

Opposer Facebook, Inc. ("Opposer" or "Facebook"), a corporation organized and existing under the laws of the State of Delaware, believes that it will be damaged by registration of the mark shown in Application Serial No. 77/139,606 and hereby opposes that application, alleging as grounds for its opposition that:

1. Opposer is acting within the mandated period of time in which to oppose the challenged trademark following publication on September 25, 2007 in the *Official Gazette*.
2. As is evidenced by the publication of the DATEBOOK mark in the September 25, 2007 *Official Gazette*, Applicant Allison N. Witherspoon ("Applicant") seeks to register the mark DATEBOOK (the "Proposed Mark") as a trademark in International Class 45 for "Internet based social networking, introduction, and dating services." Applicant is, upon information and belief, an Individual residing at 1691 Sulphur Springs Ave., Saint Helena, CA 94574. Applicant has filed on an Intent-to-Use basis.
3. Starting more than three years ago, and continuously since then, the FACEBOOK trade name and trademark have been used in interstate and international commerce in connection with a wide range of goods and services, including but not limited to, "providing online chat

rooms for registered users for transmission of messages concerning collegiate life, classifieds, virtual community and social networking” in Class 38 and “providing an online directory information service featuring information regarding, and in the nature of, collegiate life, classifieds, virtual community and social networking” in Class 35. We refer to the foregoing services collectively as “the FACEBOOK Services.”

4. All of the FACEBOOK Services have been or are being advertised, promoted, marketed, offered and rendered in connection with Opposer’s well known FACEBOOK name, trademarks and service marks. We refer to this family of trademarks and service marks and to Opposer’s trade name collectively as the “FACEBOOK Name and Marks.”

5. The FACEBOOK Name and Marks have been continuously and widely used, advertised, promoted, marketed, offered and rendered in connection with the FACEBOOK Services for at least 3 years. The well-known use of the FACEBOOK mark in commerce, in connection with various of the FACEBOOK Services, began at least as early as 2004, and has been continuous and uninterrupted ever since then.

6. The FACEBOOK Name and Marks have been the subject of extensive advertising campaigns and the content of endless articles in technology and general media publications over the past 3 years. These advertisements and print publications have been distributed to major markets throughout the world.

7. The level of fame and consumer recognition of the FACEBOOK Name and Marks cannot be disputed. Opposer currently has over 40 million active users, and currently processes 200,000 new registrations for Opposer’s services per day. Opposer’s website, <Facebook.com>, is the 6<sup>th</sup> most trafficked website on the Internet. As a result of at least 3 years of extensive advertising and use of the FACEBOOK Name and Marks in connection with online social networking services, the FACEBOOK Name and Marks have acquired extensive goodwill, and have come to be immediately identified as the source of the FACEBOOK Services.

8. The FACEBOOK Name and Marks are famous. The FACEBOOK Name and Marks are recognized by virtually every consumer familiar with the online social networking industry in the United States and throughout much of the rest of the world.

9. Opposer's rights in the FACEBOOK Name and Marks are further evidenced by its ownership of numerous United States Trademark registrations and applications, including the following: U.S. Registration No. 3041791; U.S. Registration No. 3122052; U.S. Application Serial No. 78920322; U.S. Application Serial No. 78962629; U.S. Application Serial No. 77125103; U.S. Application Serial No. 77039123; and U.S. Application Serial No. 77189479, all for the mark FACEBOOK.

The registrations listed above are in full force and effect

10. There is no issue as to priority. Opposer filed for and obtained its FACEBOOK registrations prior to the May 2006 first use date of Applicant's DATEBOOK application, which is the subject of this proceeding. Further, Opposer's first use of the FACEBOOK Name and Marks predates the May 2006 first use date of Applicant's DATEBOOK application, which is the subject of this proceeding. FACEBOOK has been using the trademark FACEBOOK as a service mark and trade name for its services since 2004.

11. The Proposed Mark is confusingly similar to Opposer's FACEBOOK Name and Marks when used in connection with Applicant's services, as identified in Serial No. 77/139,606. Thus, Applicant's use of the Proposed Mark is likely to cause confusion, mistake or deception in the minds of prospective purchasers as to the origin, source, sponsorship or association of Applicant's services, thereby causing loss, damage and injury to Opposer.

12. Consumers familiar with the FACEBOOK Name and Marks are likely to mistakenly believe that Applicant's services are sponsored, authorized, associated with or otherwise approved by Opposer due to the confusing similarity between the Proposed Mark and Opposer's FACEBOOK Name and Marks. Deficiencies or faults in the quality of Applicant's services are likely to reflect negatively upon, tarnish, and seriously injure the reputation which

Opposer has established for services marketed under the FACEBOOK Name and Marks. This confusion is likely to result in loss of revenues to Opposer and damage to Opposer's reputation.

13. Applicant's use of the Proposed Mark does or is likely to falsely suggest a relationship between Applicant's services and Opposer's services. Such use of the Proposed Mark is likely to cause confusion, mistake or deception with respect to the source or sponsorship of Applicant's services. Such use is likely to cause an increase in sales by Applicant due to consumers' mistaken belief that Opposer is the source or sponsor of Applicant's services, resulting in ill-gotten gains by Applicant. Applicant's use of the Proposed Mark is therefore likely to result in Applicant's trading off and benefiting from the goodwill associated with Opposer, resulting in ill-gotten gains by Applicant.

14. For the foregoing reasons, the registration sought by Applicant is contrary to the provisions of Section 2 of the Lanham Act, and Opposer would be damaged thereby.

15. In the unlikely event that any consumers may not be confused into believing that Applicant's services originate from or are related to those of Opposer, Applicant's use of the Proposed Mark would diminish the distinctive quality of Opposer's famous FACEBOOK Name and Marks as they relate to the FACEBOOK Services, thereby causing dilution of Opposer's famous FACEBOOK Name and Marks in violation of Lanham Act Section 43, and in violation of Opposer's rights under state dilution and unfair competition law. As a result, the ability of Opposer's FACEBOOK Name and Marks to identify Opposer's FACEBOOK Services is weakened, thereby causing loss, damage and injury to Opposer.

16. For the foregoing reasons, the registration sought by Applicant is contrary to the provisions of Section 43 of the Lanham Act, and Opposer would be damaged thereby.

17. In order to protect the public against confusion and deceit, and to protect Opposer's famous marks from infringement, dilution, and unfair competition, the Proposed Mark must not be registered.

WHEREFORE, Opposer respectfully prays for the following:

a. a finding that FACEBOOK has priority as to Applicant's application to register the DATEBOOK mark in connection with Internet based social networking, introduction, and dating services;

b. a finding that Applicant's proposed DATEBOOK mark is likely to cause confusion with FACEBOOK's family of FACEBOOK marks;

c. a finding that Applicant's proposed DATEBOOK mark dilutes FACEBOOK's family of FACEBOOK marks; and

d. that the opposition be sustained and Application Serial No. 77/139,606 and the mark therein sought for the services identified therein be denied and refused.

This Notice is submitted electronically, together with the requisite \$300 filing fee. Please charge any additional fees required to our Deposit Account No. 08-1645 (Our Reference No. 41446-5000) as necessary.

Dated: October 17, 2007

Respectfully submitted,

HELLER BHRMAN LLP

By: 

Harold J. Milstein  
Thayer M. Preece  
275 Middlefield Road  
Menlo Park, California 94025  
(650) 324-7137  
(650) 324-0638 (fax)

Attorneys for Opposer  
FACEBOOK, Inc.

# **EXHIBIT**

**39**

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of trademark Application Serial No. 77/359,288

Mark: FACE DIAL

Published for Opposition on May 20, 2008

Facebook, Inc.,

Opposer,

-v-

iQzone, Inc.,

Applicant.

Opposition No. \_\_\_\_\_

**NOTICE OF OPPOSITION**

Opposer Facebook, Inc., a Delaware Corporation with a principal place of business at 151 University Avenue Palo Alto California 94301 (hereinafter referred to as "Opposer" or "Facebook"), believes that it will be damaged if the above-identified mark FACE DIAL (Application Serial No. 77/359,288) is allowed to register.

To the best of Facebook's knowledge, the legal name of the current owner of the application is iQzone, Inc., a Delaware corporation with a principal place of business at 8535 E. Hartford Drive, Suite 108 Scottsdale, Arizona 85255 (hereinafter referred to as "Applicant" or "iQzone").

The grounds for opposition are as follows:

1. Facebook has obtained the necessary extensions of time in which to oppose the above-referenced application following publication on May 20, 2008 in the Official Gazette.
2. Applicant seeks to register the mark FACE DIAL (the "Proposed Mark") as a trademark for computer software for advertising and distributing classified advertising and classified advertising space to individuals via computer and wireless networks and telecommunications systems; computer software for providing consumer information about



products and services; computer software for hosting online web facilities for others for organizing and conducting online discussions, meetings and gatherings and providing customized web pages featuring user-defined information, personal profiles and information all via computer and wireless networks and telecommunications systems in Class 9 and computer services, namely, hosting online web facilities for others for organizing and conducting online discussions, meetings and gatherings; computer services in the nature of providing customized web pages featuring user-defined information, personal profiles and user specific information in Class 42.

3. Applicant filed for the Proposed Mark, on an intent-to-use basis, on December 26, 2007.

4. Beginning at least as early as 2004, and continuously since then, Facebook has used its FACEBOOK trade name and trademark in interstate and international commerce in connection with a wide range of goods and services, including but not limited to online social networking and facilitating online communications (“the FACEBOOK Services”).

5. The FACEBOOK Services have been or are being promoted, offered, and rendered in connection with Facebook’s well known FACEBOOK name, trademark and service mark (collectively, the “FACEBOOK Mark”).

6. Facebook is the owner of United States Trademark registrations, including U.S. Registration Nos. 3,122,052 and 3,041,791 for FACEBOOK in Class 35 for providing an online directory information service featuring information regarding, and in the nature of, collegiate life, classifieds, virtual community and social networking, and in Class 38 for providing online chat rooms for registered users for transmission of messages concerning collegiate life, classifieds, virtual community and social networking, registered on July 25, 2005 and January 1, 2006 (as amended on November 14, 2006), respectively (collectively the “FACEBOOK Registrations”).

7. In addition, Facebook is the owner of numerous earlier-filed United States Trademark applications, including the following: U.S. Application Serial No. 78/920,322 for

FACEBOOK in Classes 35, 38, 42 and 45 for, among other things, promoting the goods and services of others over the Internet, hosting of online web facilities for others for organizing and conducting online meetings, and various other online social networking-related services, filed on June 29, 2006; U.S. Application Serial No. 78/962,629 for FACEBOOK in Class 25 for, among other things, various items of clothing, filed on August 29, 2006; U.S. Application Serial No. 77/125,103 for FACEBOOK in Classes 18, 20, and 21 for, among other things, various bags and figurines, filed on March 7, 2007; U.S. Application Serial No. 77/039,123 for FACEBOOK in Classes 9, 38, 41 and 42 for, among other things, computer software development tools for social networking, and various other social networking-related products and services, filed on November 7, 2006; U.S. Application Serial No. 77/189,479 for FACEBOOK in Classes 9, 38, 41 and 42 for, among other things, software to enable uploading and sharing electronic media or information over the Internet or other communications network, and other online social networking-related products and services, filed on May 24, 2007; U.S. Application Serial No. 77/324,177 for FACEBOOK INSIGHTS in Class 35 for, among other things, various marketing, advertising, and promotion services, filed on November 7, 2007; U.S. Application Serial No. 77/321,801 for FACEBOOK PAGES in Classes 9, 35, 38, 41 and 42 for, among other things, promoting the goods and services of others over the Internet, software to enable uploading and sharing electronic media or information over the Internet or other communications network, hosting of online web facilities for others for organizing and conducting online meetings, providing temporary use of non-downloadable software applications for posting and reading classifieds, and various other online social networking-related products and services, filed on November 5, 2007; U.S. Application Serial No. 77/321,801 for FACEBOOK BEACON in Classes 35, 38, 41, 42 and 45 for, among other things, promoting the goods and services of others over the Internet, electronic transmission of instant messages and data and providing temporary use of non-downloadable software applications for classifieds, virtual community, social networking, photo sharing, video sharing, and transmission of photographic images, filed on November 5, 2007; and U.S. Application Serial No. 77/321,779 for FACEBOOK ADS in

Classes 35, 38, 41, 42 and 45 for, among other things, promoting the goods and services of others over the Internet, electronic transmission of instant messages and data and providing temporary use of non-downloadable software applications for classifieds, virtual community, social networking, photo sharing, video sharing, and transmission of photographic images, filed on November 5, 2007 (collectively “the FACEBOOK Applications”).

8. The FACEBOOK Mark has been continuously and widely used, promoted, offered and rendered in connection with the FACEBOOK Services for more than four years. The FACEBOOK Mark has become widely recognized by the general consuming public as signifying the source of the preeminent online social networking service in the United States. Facebook’s millions of users cut across virtually every demographic group in the United States. Facebook is regularly and prominently referenced and discussed in numerous media sources, including national and local newspapers, magazines, television and radio broadcasts, and online publications and blogs. These media sources have been and are distributed and accessed throughout the United States, and indeed, throughout most of the world.

9. As a result of the extensive, indeed pervasive, use and promotion of the FACEBOOK Mark in connection with the FACEBOOK Services, the FACEBOOK Mark has acquired extensive goodwill and has come to be immediately identified as the source of the FACEBOOK Services.

10. The FACEBOOK Mark is famous within the meaning of 15 U.S.C. section 1125(c)(2)(A).

11. Facebook also owns U.S. Application Serial No. 78/764,638 for FACE in Classes 16, 25, 35, 38, 41 and 45 for, among other things, advertising services provided via the Internet, short message and electronic text messaging receiving, sending and forwarding, instant messaging services and various other online social networking-related services, filed on December 1, 2005 (the “FACE Application”).

12. Opposer’s FACEBOOK Mark has priority over Applicant’s application to register FACE DIAL.

13. Opposer's FACEBOOK Registrations have priority over Applicant's application to register FACE DIAL.

14. Opposer's FACEBOOK Applications, and its FACE Application, all have earlier priority dates than Applicant's application to register FACE DIAL.

15. The mark FACE DIAL, when used in connection with Applicant's services as identified in application Serial No. 77/359,288, is confusingly similar to Opposer's FACEBOOK Mark, its FACEBOOK Registrations, its FACEBOOK Applications, and its FACE Application.

16. Applicant's use and registration of FACE DIAL are likely to cause confusion, mistake or deception among consumers as to the nature, source and origin of the services and products offered by Applicant, or as to the affiliation, connection, or association of Applicant with Facebook, thereby causing loss, damage and injury to Facebook.

17. For the foregoing reasons, the registration sought by Applicant is contrary to the provisions of Section 2 of the Lanham Act, and Facebook would be damaged thereby.

18. In addition, Applicant's use and registration of the Proposed Mark will dilute Opposer's FACEBOOK Mark by tarnishing the FACEBOOK Mark and by blurring the distinctiveness thereof.

19. For the foregoing reasons, the registration sought by Applicant is further contrary to the provisions of Section 43 of the Lanham Act and in violation of Facebook's rights under state dilution and unfair competition law, and Facebook would be damaged thereby.

Wherefore, Facebook prays that the Board sustain this Opposition and refuse registration of the FACE DIAL mark.

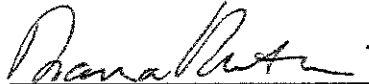
Facebook hereby appoints the law firm of Orrick, Herrington & Sutcliff LLP, 1000 Marsh Road, Menlo Park, California 94025, telephone number (650) 614-7400, as the address to whom all communications are to be directed and hereby appoints each of the following attorneys associated with said firm, and at the same address, individually and collectively, its attorneys, with full power of substitution and revocation, to prosecute this

opposition proceeding and to transact all business in the United State Patent and Trademark Office in connection therewith: Thomas H. Zellerbach and Diana Rutowski.

Dated: November 17, 2008

Respectfully submitted,

ORRICK, HERRINGTON & SUTCLIFFE LLP  
THOMAS H. ZELLERBACH  
DIANA RUTOWSKI



---

Diana M. Rutowski  
1000 Marsh Road  
Menlo Park, California 94025

Attorneys for Petitioner  
Facebook, Inc.

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of trademark Application Serial No. 77/359,288  
Mark: FACE DIAL  
Published for Opposition on May 20, 2008

Facebook, Inc.,		
	Opposer,	
-v-		Opposition No. _____
iQzone, Inc.,		
	Applicant.	

**CERTIFICATE OF SERVICE**

I hereby certify that a true and complete copy of the foregoing:

**NOTICE OF OPPOSITION**

has been served on by mailing said copy on iQzone, Inc., on November 17, 2008, via First Class Mail, postage prepaid and electronic mail to:

Matthew B. Levine, Esq.  
Titus, Brueckner & Berry, P.C.  
8355 E. Hartford Drive, Suite 200  
Scottsdale, Arizona 85255  
MLevine@tbb-law.com



# **EXHIBIT**

**40**

**Certificate of Transmission**

I hereby certify that this correspondence is being transmitted via the Electronic System for Trademark Trials and Appeal (ESTTA) to: the Commissioner for Trademarks, P.O. Box 1451, Alexandria, Virginia 22313-1451.

*Charles Peck* \_\_\_\_\_ (Name)

1/20/09 \_\_\_\_\_ (Date)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of application Serial No. 77/425457  
For the Trademark SUPER WALL  
Published in the Official Gazette on July 22, 2008

FACEBOOK, INC.,	)	
	)	
Opposer,	)	
	)	Opposition No.
v.	)	
	)	
ROCKYOU, Inc.,	)	
	)	
Applicant.	)	
	)	

**NOTICE OF OPPOSITION**

Opposer Facebook, Inc.. (“Facebook”), a Delaware corporation having its principal place of business at 156 University Avenue, Palo Alto, CA 94301, believes that it will be damaged by the issuance of a registration for the mark SUPER WALL, as applied for in Application Serial No. 77/425457 filed on March 18, 2008 by Applicant RockYou, Inc. (“Applicant”), a Delaware Corporation, with a mailing address at 585 Broadway Street, Redwood City, CA 94063.



As grounds for opposition, Facebook alleges that:

1. Facebook, is the world's leading provider of online social networking services. Indeed, Facebook.com has been recognized as among the top 5 most-trafficked websites of any kind in the world. The Facebook website site allows computer users to communicate with existing friends, make new friends, organize groups and events and share their personal profiles, status, activities, photos, links and videos and create online communities of users with shared interests and connections. Facebook currently has over 150 million active users worldwide.

2. Facebook provides tools for each of its users to create a personal web page ("Profile Page") on which the user can choose to display personal information such as education or professional background, favorite music, books, or television shows, political leanings, and contact information.

3. Facebook also provides on each Profile Page means through which other users can communicate with each other, including online chat and private messages that are sent directly to users' inboxes, similar to e-mail. A third method of communication allows Facebook users to leave items such as textual messages, links, photographs, or video on a user's Profile page that are visible to any user with access to that user's Profile Page. Facebook offers these and other services under the "WALL" mark.

#### **FACEBOOK'S MARKS**

4. Facebook is the owner of pending U.S. Application Serial No. 78/920335 for the mark THE WALL, which was filed on June 29, 2006 in International Classes 35 (providing an online directory information service featuring information regarding, and in the nature of, collegiate life, general interest, classifieds, virtual community, social networking, photo sharing, and transmission of photographic images; advertising and information distribution services,

namely, providing classified advertising space via the global computer network; promoting the goods and services of others over the Internet), 38 (providing online chat rooms and electronic bulletin boards for registered users for transmission of messages concerning collegiate life, general interest, classifieds, virtual community, social networking, photo sharing, and transmission of photographic images), 42 (computer services, namely, hosting online web facilities for others for organizing and conducting online meetings, gatherings, and interactive discussions; and computer services in the nature of customized web pages featuring user-defined information, personal profiles and information) and 45 (internet based introduction and social networking services).

5. In addition, Facebook owns common law rights in the WALL mark, which has been continuously, prominently, and conspicuously in use on its website and other materials in interstate commerce in the United States, in connection with its services since well prior to Applicant's alleged first use of the opposed mark. All of Facebook's marks that consist of or incorporate the term WALL will hereafter be referred to as the "WALL Marks."

6. The WALL Marks are suggestive marks, and thus inherently distinctive. The terms THE WALL and WALL have no descriptive meaning as applied to social networking services or any of the other goods and services covered by Facebook's application or in connection with which Facebook uses the WALL Marks.

#### **APPLICANT'S USE OF THE SUPER WALL NAME AND MARK**

7. Applicant filed Application Serial No. 77/425457 for SUPER WALL ("SUPER WALL Application") on March 18, 2008, for use with "non-downloadable application software for public display of messages, digital images, graphics, video, photographs and music" alleging

a first use date of June 18, 2007. This application was published in the Official Gazette on July 22, 2008.

8. The SUPER WALL Application disclaims the exclusive right to use the descriptive term “super” apart from the mark as shown, leaving only “wall” as the source indicating portion of the mark.

9. Applicant uses its SUPER WALL mark in connection with an application on Facebook’s website and advertises it as “the best way to find and share entertaining videos, pictures, graffiti, and more with your friends.” See webpage for Super Wall Application, at <http://www.facebook.com/apps/application.php?id=2601240224>, attached as Exhibit A.

10. Based on the overwhelming similarity between Facebook’s online services offered under the WALL Marks, and Applicant’s online services offered under the SUPER WALL mark, it is apparent that Applicant intended the description of services recited in Applicant’s SUPER WALL application to cover services that are the same as or related to those offered by Facebook in connection with the WALL Marks. These similarities are strengthened by online reviews which directly compare the functionality offered by Applicant and Facebook under their respective marks. See “The War and Art of the Wall,” FaceReviews, at <http://facereviews.com/2007/07/31/the-war-and-art-of-the-wall/>, attached as Exhibit B.

11. The mark Applicant proposed to register, SUPER WALL, is substantially similar to the WALL Marks. The term “super” is descriptive of Applicant’s goods, as intended to be an improved version of the Facebook WALL service, and thus does little to create a unique commercial impression. Indeed, Applicant was required to disclaim the “super” portion of its mark. In contrast with the weak “super” prefix of Applicant’s SUPER WALL Mark, the term “wall” in SUPER WALL appropriates the entirety of the WALL Marks, and is suggestive as

applied to Applicant's services. By combining the generic or descriptive term SUPER with the suggestive term WALL, Applicant has created a mark which calls to mind Facebook's WALL marks and suggests an improved version of Facebook's Wall service.

12. Applicant's alterations to the WALL Marks, therefore, merely emphasize the similarity to Facebook's well-known WALL Marks, and thereby create a likelihood of confusion and dilute the distinctiveness of the WALL Marks.

13. There is no issue as to priority of use. Facebook began using its WALL Marks well prior to Applicant's alleged June 18, 2007 date of first use.

**GROUND FOR OPPOSITION:**

**LIKELIHOOD OF CONFUSION**

14. Facebook incorporates by reference paragraphs 1 through 13, inclusive, as if fully set forth herein.

15. Applicant's SUPER WALL Mark is confusingly similar to Facebook's WALL Marks in appearance, sound, meaning, and commercial impression.

16. The services described in the SUPER WALL Application are the same as or closely related to the services offered by Facebook under the WALL Marks and identified in THE WALL Application.

17. The types of services identified in the SUPER WALL Application and the types of services offered by Facebook under the WALL Marks are normally offered through the same channels of trade and specifically, here, are currently both offered on Facebook's website.

18. On information and belief, based upon Applicant's own representation on its website that the service it provides on Facebook under the SUPER WALL mark is a Wall "upgrade," Applicant filed the SUPER WALL Application with knowledge of Facebook and the

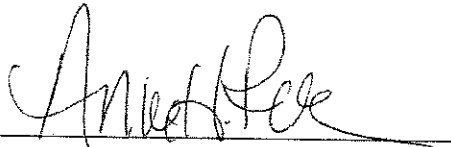
WALL Marks. See RockYou website at <http://www.rockvou.com/corp/facebook/dev.php>, attached as Exhibit C.

19. Accordingly, registration of the SUPER WALL Mark will damage Facebook because the SUPER WALL Mark is likely, when used in connection with the services described in the SUPER WALL Application, to cause confusion, or to cause mistake or to deceive. Thus the SUPER WALL Mark is unregistrable under Sections 2(d) and 3 of the Trademark Act, as amended, 15 U.S.C. §§ 1052(d) and 1053, and should be refused registration.

20. Wherefore, Facebook prays that this Opposition be sustained, and that Application Serial No. 76/028,574 be refused.

Respectfully submitted,

COOLEY GODWARD KRONISH LLP

By: 

Date: January 20, 2009

Anne H. Peck  
Attorneys for Opposer