

Cooper, Monte

From: Adam Wolfson [adamwolfson@quinnemanuel.com]
Sent: Thursday, November 15, 2007 6:41 PM
To: Chatterjee, I. Neel
Cc: Sutton, Theresa A.; Cooper, Monte; Nathan Shafroth; Annette Hurst; Dan Hampton; Joczek; Sbauer; Rick Werder; Peter Calamari; Renee Bea; Sarah Hartley
Subject: Re: Motion to Compel Interrogatory No. 1

Neel,

Our Response speaks for itself and says what it says. Email exchanges are not an appropriate way to seek a party's contentions. We have not foreclosed any factual grounds for our copyright claim as discovery is ongoing.

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

From: Chatterjee, I. Neel <nchatterjee@orrick.com>
To: Adam Wolfson
Cc: Sutton, Theresa A. <tsutton@orrick.com>; Cooper, Monte <mcooper@orrick.com>; nathan.shafroth@hellerehrman.com <nathan.shafroth@hellerehrman.com>; annette.hurst@hellerehrman.com <annette.hurst@hellerehrman.com>; dan.hampton@hklaw.com <dan.hampton@hklaw.com>; joczek@proskauer.com <joczek@proskauer.com>; sbauer@proskauer.com <sbauer@proskauer.com>; Rick Werder; Peter Calamari; Renee Bea; Sarah Hartley
Sent: Thu Nov 15 18:10:24 2007
Subject: Re: Motion to Compel Interrogatory No. 1

Adam:

We will, of course, deal with this at the hearing but you did not answer my question. Is it Connectu's contention that the code Mark Zuckerberg allegedly wrote for Harvard Connection is the basis for the copyright infringement claim? The memorandum you filed states that but it is not what the interrogatory response says. If the opposition brief accurately sets forth the position of ConnectU (I.e. That Mark Zuckerberg's alleged contribution (and that contribution alone) is the basis of the copyright infringement claim), will ConnectU so state in its response?

The answer to this question is pretty simple.

Please let me know.

Regards,
Neel

Sent from my BlackBerry Wireless Handheld

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

From: Adam Wolfson <adamwolfson@quinnemanuel.com>
To: Chatterjee, I. Neel
Cc: Sutton, Theresa A.; Cooper, Monte; Nathan Shafroth; Annette Hurst; Dan Hampton; Joczek; Sbauer; Rick Werder <RickWerder@QuinnEmanuel.com>; Peter Calamari <petercalamari@quinnemanuel.com>; Renee Bea <ReneeBea@QuinnEmanuel.com>; Sarah Hartley <sarahhartley@quinnemanuel.com>
Sent: Thu Nov 15 17:51:08 2007
Subject: RE: Motion to Compel Interrogatory No. 1

Neel,

The Response asserts two bases for denying the motion. The first is that the Harvard Connection code is crucial to the copyright claim. This does not mean that the Harvard Connection code is the "only" evidence of infringement, but, rather,

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that it is important. Plaintiffs note that this code was cited "[a]mong other facts" in the original Response.

The second basis for denial is your production of the January 2004 version of thefacebook.com code, which would have been impossible to compare with our own code by the time you filed your motion. As you well know, this is your first production of relevant code contemporaneous to the events at issue in this case and affords our clients, for the first time, the ability to compare code.

If our comparison requires that we supplement our interrogatory responses, we will, of course, do so. Until today, however, discovery had not moved to a point where this was even remotely possible. We fail to see how one can assert specific infringement of copyrighted material when the allegedly infringing material is continually withheld. Now that we have what we believe is the infringing code, we will send it to our expert and get back to you.

Regards,
Adam

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

From: Chatterjee, I. Neel [mailto:nchatterjee@orrick.com]

Sent: Thu 11/15/2007 3:22 PM

To: Adam Wolfson; Rick Werder

Cc: Sutton, Theresa A.; Cooper, Monte; Nathan Shafroth; Annette Hurst; Dan Hampton; Oczeck, Jeremy; Bauer, Steven

Subject: Motion to Compel Interrogatory No. 1

Dear Adam:

We have reviewed ConnectU's response to Facebook's motion to compel responses to interrogatory no. 1. While we do not think it is appropriate to ask for the motion to be heard on Monday, we do believe a follow up discussion based upon the filing is appropriate.

First, ConnectU's opposition memorandum appears to claim that the sole basis for its copyright infringement claim is code that was alleged to be written by Mark Zuckerberg for the Harvard Connection project. ConnectU claims it does not possess this code. The response to Interrogatory No. 1. does not clearly and unequivocally state the position that appears to be in the memorandum. Indeed, the response appears to claim much, much more as a basis for asserting copyright infringement. If the theory is solely that the copyright infringement allegation rests on code written by Mark Zuckerberg that is not possessed by ConnectU, please confirm that position by so stating in a verified interrogatory immediately. Also, please confirm that ConnectU does not contend that any Harvard Connection code produced to date is infringed by any versions of Facebook code produced in this litigation prior to November 13, 2007. If ConnectU does not confirm this, our view is that supplementation is still required as previously promised and as is required by the law.

While the interrogatory response will still be incomplete, as ConnectU has not identified specific code or expressive elements it purports are infringing, at least focusing the interrogatory response will frame the issue better for resolution. This could have been done through the meet and confer and promised supplementation months ago, but ConnectU refused to supplement at all or set forth its position. Nevertheless, such supplementation may focus the Court for resolution of Facebook's motion.

Second, ConnectU appears to have an issue with Facebook's recent production of newly found code and supplementation of Interrogatory No. 1. Facebook's motion is to obtain the promised supplementation from months ago which presumably included at least ConnectU's Rule 11 basis for asserting infringement. If you need additional supplementation based upon the newly found code (which we believe will have no evidence of any infringement and therefore no supplementation will be needed), we can deal with that issue separately. We do not view any supplementation based upon the recently produced code as part of our motion to compel.

Please let us know your position in advance of the hearing Monday.

Regards,
Neel Chatterjee

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