

# **EXHIBIT 1**

1 UNITED STATES DISTRICT COURT

2 DISTRICT OF MASSACHUSETTS

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4 CONNECTU, INC., et al, : Civil Action  
5 Plaintiff : No. 07-10593-DPW  
6 :  
7 V. : Courtroom No. 1  
8 : 1 Courthouse Way  
9 : Boston, MA 02210  
10 : 2:30 p.m., Wednesday  
11 FACEBOOK, INC., et al, :  
12 Defendant : July 25, 2007  
13 -----

8 Motion Hearing

9  
10 Before: THE HONORABLE DOUGLAS P. WOODLOCK,  
11 UNITED STATES DISTRICT JUDGE  
12

13 APPEARANCES:

14 Finnegan, Henderson, Farabow, Garrett & Dunner, LLP,  
15 (by John F. Hornick, Esq., Margaret A. Esquenet, Esq.  
16 and Meredith Schoenfeld, Esq.)  
901 New York Ave., NW, Washington, DC 2001-4413,  
on behalf of the Plaintiffs.

17 Griesinger, Tighe & Maffei, LLP,  
18 (by Scott McConchie, Esq.)  
176 Federal Street, Boston, MA 02110-2214,  
19 on behalf of the Plaintiffs.

20 Holland & Knight LLP, (by Daniel K. Hampton, Esq.),  
10 St. James Avenue, Boston, MA 02116,  
21 on behalf of the Defendant, Eduardo Saverin.

22 Orrick, Herrington & Sutcliffe, LLP, (by I. Neel  
23 Chatterjee, Esq. and G. Hopkins Guy, III, Esq.),  
1000 Marsh Road, Menlo Park, CA 94025-1021,  
on behalf of the Defendants.

24 Heller Ehrman, LLP, (by Annette L. Hurst, Esq.),  
25 333 Bush St., San Francisco, CA 94104-2878,  
on behalf of the Defendant, Eduardo Saverin.

1 THE CLERK: ConnectU, Inc. v. Facebook, Inc.,  
07-10593.

2 THE COURT: Well, let me approach this a little  
3 bit differently with the parties. I guess,  
4 Mr. Chatterjee, you're going to speak generally for the  
5 defendants?

6 MR. CHATTERJEE: Your Honor, I'll be speaking for  
7 all of the defendants, except Eduardo Saverin, who is  
8 represented by Ms. Hurst.

9 THE COURT: Okay.

10 Let me understand from you what difference this  
11 proliferation of claims is going to have before this is in  
12 discovery.

13 MR. CHATTERJEE: Thank you, your Honor.

14 I think there are a couple of differences that  
15 this proliferation of claims has, two in particular.

16 The first one is basically this case, I think  
17 your Honor correctly noted at the last hearing, has kind  
18 of spun in a lot of directions and somewhat out of  
19 control. And, what we see in the current complaint is  
20 actually broader than the complaint that was filed by  
21 ConnectU, LLC, which is a different entity than the  
22 plaintiff here, today, and in this case.

23 THE COURT: The original complaint, not the  
24 amended complaint?

25 MR. CHATTERJEE: No, the original complaint and

1 things. That's a legal call.

2 The unjust enrichment claim, obviously, they've  
3 pled a lot of causes of action here and there is -- there  
4 are adequate remedies along that should not be in the  
5 case.

6 As far as, you know --

7 THE COURT: You mean where there's an adequate  
8 remedy you don't have unjust enrichment?

9 MR. CHATTERJEE: It may be an available damage  
10 under other causes of action. But, for example, a  
11 copyright infringement, there's going to be an adequate  
12 remedy of law or remedy associated with the copyright  
13 infringement for which unjust enrichment shouldn't be  
14 available. Or, to the extent that they think there is  
15 something separate, perhaps your Honor's suggestion as to  
16 Twombly is correct and they need to provide detailed  
17 factual allegations. I would support that kind of  
18 pleading.

19 THE COURT: All right.

20 Well, let me understand from the plaintiff why  
21 these aren't just for consideration.

22 MR. HORNICK: Well, your Honor, would you like me  
23 to address all those points or did you have a particular  
24 question?

25 THE COURT: Well, this. This is a -- it's not

1 been a long time to mount every complaint --

2 MR. HORNICK: Yes.

3 THE COURT: -- here.

4 In fact, you appeared with this one almost  
5 simultaneously with the dismissal of the case. It remains  
6 notice pleading here.

7 Now, tell me what is different with the factor  
8 through the prism of copyright preemption. What's  
9 different here?

10 You're using the complaint itself. Maybe the way  
11 to deal with it is just to start with the questions and a  
12 contract. Go over the terms and conditions of the  
13 contract.

14 MR. HORNICK: Well, the contract, your Honor --  
15 I'll just turn to my notes here.

16 THE COURT: What were the terms and conditions of  
17 the contract?

18 MR. HORNICK: The contract was that  
19 Mr. Zuckerberg was going to complete the Harvard  
20 connection code and he was going to become a member of the  
21 Harvard connection team to help finish the website, launch  
22 it, help it grow, and profit from the case success.

23 THE COURT: Okay. Now, let's assume that he  
24 finished the code and they refused to let him be part of a  
25 team. How would you oppose the contract?

1 MR. HORNICK: Well, there's no allegation that  
2 they refused to allow him --

3 THE COURT: No. The way we're looking at the  
4 bilateral character of the contract that you just  
5 identified. And, I want to know what the terms and  
6 conditions are. You've given me this kind of loose --

7 MR. HORNICK: No, your Honor. I've --

8 THE COURT: Just a moment.

9 You've given me this kind of loose description.  
10 I've been through your complaint. It's gossimer thin on  
11 the question of contract, as a contract. And so, I'm  
12 giving you an opportunity to tell me what the contract is  
13 and what the terms and conditions of the contract are.

14 MR. HORNICK: We are, as I was saying, the  
15 service that Mr. Zuckerberg was supposed to provide under  
16 the contract was to finish the Harvard connection code, to  
17 become a member of the team, and wherever that meant, to  
18 help get this website launched and --

19 THE COURT: Now, this is a contract, the object  
20 of which is whatever that meant?

21 MR. HORNICK: No, your Honor. This is --

22 THE COURT: I didn't follow you. That's why I  
23 made the statement.

24 MR. HORNICK: I said it's to become a member of  
25 the team. And, once you become a member of a team who's

1 going to launch a website, there are a lot of things that  
2 you would do. But, as a member of the team, you would do  
3 anything that is needed to be done to launch that website  
4 because you are going to be profiting from it. So --

5 THE COURT: What are you going to receive?

6 MR. HORNICK: What you're going to receive  
7 immediately is sweat equity.

8 THE COURT: Whatever do you mean? A third?

9 MR. HORNICK: No. The parties were thinking  
10 about a quarter.

11 THE COURT: They were thinking about a quarter,  
12 but they hadn't said anything --

13 MR. HORNICK: No, no.

14 THE COURT: -- about a quarter?

15 MR. HORNICK: Your Honor, they were thinking  
16 about a quarter at the time because there were four people  
17 at the time.

18 THE COURT: Right.

19 And, there was an agreement that there would be a  
20 quarter?

21 MR. HORNICK: That is our position, yes.

22 THE COURT: Where is that in the complaint?

23 MR. HORNICK: The complaint does not say how much  
24 or what percentage Mr. Zuckerberg --

25 THE COURT: Isn't that an important term or

1 condition of the contract?

2 MR. HORNICK: Yes, it is, your Honor.

3 THE COURT: Okay.

4 MR. HORNICK: But, I --

5 THE COURT: But, it's not in the complaint?

6 MR. HORNICK: That is not in the complaint, no.

7 But, the complaint does say that Mr. Zuckerberg would  
8 obtain equity in exchange for --

9 THE COURT: What does "equity" mean? You've got  
10 to describe it with some degree of particularity.

11 MR. HORNICK: Well, your Honor --

12 THE COURT: You're going to have to prove it with  
13 some degree of particularity.

14 MR. HORNICK: Proving it I don't view as a  
15 difficulty. Pleading it, I also don't view as a  
16 difficulty. If necessary, we can amend the complaint.

17 But, at the time, we believed --

18 THE COURT: It would be your third amendment?

19 MR. HORNICK: No, your Honor. I would actually  
20 view it as the second and I'll tell you why.

21 There are substantially no differences between --  
22 in the facts that are alleged -- between the original  
23 complaint, the amended complaint and the complaint filed  
24 in this new case --

25 THE COURT: Is there a new cause of action in



1 this complaint?

2 MR. HORNICK: There is one new claim. There are  
3 no new causes of action.

4 THE COURT: May I suggest the use of numbers here  
5 because it's a little bit elusive?

6 MR. HORNICK: Yes. The tenth -- there were nine  
7 -- there were -- I believe there were eight claims, seven  
8 claims in the original complaint. The amended complaint I  
9 believe -- I'd have to check, but I believe that added  
10 copyright in the 93A claim.

11 The complaint in this case --

12 THE COURT: That's the second one. Now, there's  
13 a third one.

14 MR. HORNICK: And, in this case, the new case --

15 THE COURT: This is the third one. Right?

16 MR. HORNICK -- the third complaint, yes. This  
17 adds the tenth claim which is the breach of confidence.

18 Now, the reason that I said that amending would  
19 only be the second try, really, is because when we served  
20 the original complaint, the defendants didn't answer  
21 before we amended. We amended the complaint and added the  
22 copyright claim and the 93A claim. And, then, they  
23 answered without any objections to pleading sufficiency.

24 THE COURT: Do they have to?

25 MR. HORNICK: They do not have to, no, your

1 Honor. But, then, what we refiled was essentially the  
2 same facts. We didn't see any reason to beef up the facts  
3 because they didn't complain about pleading sufficiency  
4 the first time around. So, we did actually beef up some  
5 of the facts. We added anything that they admitted from  
6 the answer to the amended complaint. We also expanded on  
7 some of the other facts. But, we didn't see a reason to  
8 expand them any more because they didn't object the first  
9 time.

10 So, now, we're being told no, it's not  
11 sufficient, you need to plead more facts. I can plead  
12 more facts. But, I would argue that it's not necessary  
13 under the prevailing standards in Bell Atlantic.

14 THE COURT: Do you want to go forward on your  
15 third complaint or not, understanding that this would be  
16 without -- with prejudice as to any of the claims? Or, do  
17 you want an opportunity to replead?

18 MR. HORNICK: You're asking me: Do I want to  
19 stand on the complaint as we filed it?

20 THE COURT: Yes.

21 MR. HORNICK: With no prejudice to amend it at  
22 any time later on?

23 THE COURT: Right.

24 MR. HORNICK: Well --

25 THE COURT: Without -- with no prejudice --

1 excuse me -- with prejudice in this case, if claims are  
2 found to be insufficient as alleged.

3 MR. HORNICK: Well, faced with that question,  
4 your Honor, I think I would have to say that I'd prefer to  
5 amend.

6 THE COURT: M-hm.

7 MR. HORNICK: I would be crazy not to say that in  
8 the face of that question.

9 THE COURT: And, will this amendment then tell us  
10 what the terms and conditions of the contract are? That  
11 is 25 or 24 or 26 or 27? Or, will it just say that's what  
12 we're kind of thinking about?

13 MR. HORNICK: The amendment will say that at the  
14 time Mr. Zuckerberg joined the team, the parties intended  
15 that he would obtain 25 percent of the profits if any  
16 profits that came --

17 THE COURT: Not just the parties' intention, the  
18 parties' agreement, you alleged a contract. There was an  
19 agreement that he would receive 25 percent. Is that what  
20 you're saying?

21 MR. HORNICK: Yes, your Honor. And, an agreement  
22 expresses the parties' intent and that's what the contract  
23 would say.

24 THE COURT: No. An agreement may express the  
25 parties' intent and it may not.

1 MR. HORNICK: If it's a vague contract, yes, I  
2 would agree, that it might not express the parties' intent

3 --

4 THE COURT: It might be no contract at all.

5 MR. HORNICK: What we're talking about here is  
6 not a written contract. We're talking about an oral  
7 contract --

8 THE COURT: A written contract or an oral  
9 contract that absolutely included all the relevant and  
10 material terms and conditions and understanding that this  
11 is an oral contract in which they agreed that there would  
12 be a 25 percent allocation among the four individuals  
13 involved.

14 MR. HORNICK: At that time, yes.

15 THE COURT: Well, that's the time that the  
16 contract was --

17 MR. HORNICK: Yes.

18 But, what Im trying to get at, your Honor, is  
19 that that percentage could change depending on whether the  
20 parties didn't perform equally.

21 THE COURT: And --

22 MR. HORNICK: And, there was other consideration  
23 as well.

24 THE COURT: And, this unfolding contract that  
25 we're learning a bit more about now, it changes over a

1 period of time? And, the parties agreed that it would  
2 change over a period of time?

3 MR. HORNICK: Yeah. I think that's the nature of  
4 any oral contract or implied contract.

5 THE COURT: Oh, not necessarily. That's the  
6 nature of an illusory contract.

7 MR. HORNICK: No. The parties could always agree  
8 to change their --

9 THE COURT: They could. They could.

10 Did they here?

11 MR. HORNICK: Well, Mr. Zuckerberg left before --

12 THE COURT: So, they didn't do that?

13 MR. HORNICK: No.

14 THE COURT: Okay.

15 So, interesting, that other contracts might do  
16 that. But, this one, as you tell me, does not.

17 Now, what exactly did they agree to do? They  
18 agreed to have Mr. -- from your perspective -- they agreed  
19 to have Mr. Zuckerman do the code. Right?

20 MR. HORNICK: Yes.

21 THE COURT: And, he will get 25 percent of the  
22 business? Is that it?

23 MR. HORNICK: Yes.

24 THE COURT: Any other terms and conditions of the  
25 contract?

1 plaintiff will have -- I will come to rue the day I said  
2 this -- additional pages to respond -- reasonable  
3 additional pages to respond. All right? And,  
4 "reasonable" means, I think, 40 pages.

5 All right. Anything else?

6 MR. CHATTERJEE: Thank you, your Honor.

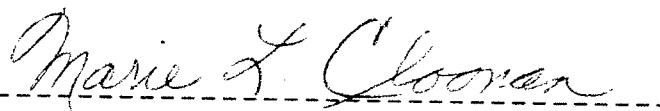
7 MR. HORNICK: No, your Honor. Thank you.

8 MS. HURST: Thank you, your Honor.

9 (Whereupon the hearing was concluded.)

10  
11  
12 CERTIFICATE

13 I, Marie L. Cloonan, Official Reporter of the  
14 United States District Court, do hereby certify that the  
15 foregoing transcript, from Page 1 to Page 72, constitutes  
16 to the best of my skill and ability a true and accurate  
17 transcription of my stenotype notes taken in the matter of  
18 Civil Action No. 07-10593-DPW, ConnectU, et al v.  
19 Facebook, Inc., et al.

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