

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CROSS ATLANTIC CAPITAL	:	
PARTNERS, INC.,	:	CIVIL ACTION
	:	
Plaintiff,	:	NO.: 07-CV-02768
	:	
vs.	:	
	:	
FACEBOOK, INC. and THEFACEBOOK,	:	
LLC	:	
	:	
Defendants.	:	

**PLAINTIFF'S RESPONSE TO
DEFENDANTS' STATEMENT OF MATERIAL
FACTS IN SUPPORT OF FACEBOOK'S MOTION FOR
PARTIAL SUMMARY JUDGMENT PRECLUDING INJUNCTION**

COMES NOW, the plaintiff, Cross Atlantic Capital Partners, Inc., by and through its undersigned counsel, and hereby responds to the Statement of Material Facts submitted by the defendants Facebook, Inc. and Thefacebook, LLC. in support of their Motion For Partial Summary Judgment Precluding Injunction.

1. XACP does not sell, offer to sell, make or import any product, service or method covered by any claim of U.S. Patent No. 6,519,629 ("the '629 Patent"). Declaration of Heidi L. Keefe ("Keefe Decl."), Ex. B [XACP Response to Request for Admission ("RFA") No. 38].

RESPONSE:

Admitted in part, denied in part. XACP does not currently sell, offer to sell, make or import any product, service or method covered by any claim of the '629 Patent. XACP has recently invested in Eggfly and is undertaking efforts to commercialize the technology disclosed and claimed in the '629 Patent. (Caldwell Decl. at ¶ 15).

2. XACP has never sold, offered to sell, made or imported any product, service or method covered by any claim of the '629 Patent. Keefe Decl., Ex. B.

RESPONSE:

Admitted in part, denied in part. It is admitted that XACP has to date never sold, offered to sell, made or imported any product, service or method covered by any claim of the '629 Patent. By way of further denial, XACP is currently working with Eggfly to offer an online community service covered by the claims of the '629 Patent. (Caldwell Decl. at ¶ 15).

3. XACP has never licensed or offered to license the '629 Patent. Keefe Decl., Ex. C [XACP Response to RFA No. 47].

RESPONSE:

Admitted in part, denied in part. It is admitted that XACP has never licensed or offered to license the '629 Patent. However, if the jury should find the patent infringed and not invalid, XACP intends to do so. (Caldwell Decl. at ¶¶ 7-9).

4. XACP's corporate designee, Brian Adamsky, testified that he is not aware of any steps XACP has taken to commercialize the '629 Patent. Keefe Decl., Ex. D, Deposition of Brian Adamsky ("Adamsky Dep."), 167:17-21.

RESPONSE:

Admitted in part, denied in part. It is admitted that the quoted portion is a partial excerpt of Mr. Adamsky's deposition. The remaining allegations of Paragraph 4 are denied.

5. XACP's business purpose is venture capital management. Keefe Decl., Ex. D, Adamsky Depo, 111:7-9.

RESPONSE:

Admitted in part, denied in part. It is admitted that the referenced quote is a partial excerpt of the deposition of Mr. Adamsky. XACP's business includes other

aspects including efforts to commercialize intellectual property which XACP has obtained through its investments. (Caldwell Decl. at ¶ 5).

6. XACP's competitors are other venture capital firms. Keefe Decl., Ex. D, Adamsky Depo., 114:3-17.

RESPONSE:

Admitted in part, denied in part. It is admitted that the referenced quote is a partial excerpt of the deposition of Mr. Adamsky. The remaining allegations of Paragraph 6 are denied.

7. Facebook is a social utility that connects people to each other on the Internet. www.facebook.com.

RESPONSE:

It is admitted that Facebook makes those claims.

8. XACP and Facebook do not compete with each other. Keefe Decl., Ex. D, Adamsky Depo., 114:3-17.

RESPONSE:

Admitted in part, denied in part. It is admitted that XACP and Facebook have not competed in the past. However, should XACP through its investments in Eggfly enter the online social community business, they will compete directly. (Caldwell Decl. at ¶¶ 15-16).

9. XACP is not entitled to, and is not claiming, lost profit damages. Keefe Decl., Ex. E, Expert Report and Disclosure of Geoffrey H. Osborne, CAP, at 5.

RESPONSE:

Admitted in part, denied in part. It is admitted that XACP has not sought damages in the form of lost profit. However, the remaining allegations of Paragraph 9 are denied.

10. If Facebook is found to infringe the '629 Patent, XACP is entitled to only money damages in the form of a reasonable royalty. Keefe Decl., Ex. E, Osborne Report, at 37.

RESPONSE:

Paragraph 10 states a legal conclusion to which no response is sought. By way of further response, XACP may be entitled to injunctive relief.

11. XACP has not been harmed by Facebook's alleged infringement. Keefe Decl., Ex. D, Adamsky Depo., 239:6-12.

RESPONSE:

Denied.

Respectfully submitted,

Dated: July 14, 2008

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CERTIFICATE OF SERVICE

This is to hereby certify that on this 14th day of July, 2008, I caused true and correct copies of the foregoing Plaintiff's Response to Defendants' Statement of Material Facts in Support of Facebook's Motion For Partial Summary Judgment Precluding Injunction to be served *via* this Court's Electronic Filing ("ECF") System, upon the following:

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