

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
AT NASHVILLE**

FACEPETS.COM, LLC,)	
)	
Plaintiff,)	
)	Case No. _____
)	
v.)	
)	
)	
FACEBOOK, INC.,)	
)	
Defendant.)	

COMPLAINT FOR DECLARATORY JUDGMENT

Comes now the Plaintiff, Facepets.com, LLC (“Facepets”), for its complaint against defendant Facebook, Inc. (“Facebook”), alleges as follows:

PARTIES

1. Facepets is a limited liability company organized and existing under the laws of the State of Tennessee, with its principal place of business in Nashville, Tennessee.

2. Upon information and belief, Facebook is a Delaware corporation with its principal place of business in Menlo Park, California.

JURISDICTION

3. The Court has subject matter jurisdiction over this action pursuant to the Federal Declaratory Judgments Act, 28 U.S.C. §§ 2201 and 2202, and 28 U.S.C. § 1338(a) and (b) based on Facebook’s unwarranted assertions that Facepets is guilty of trademark infringement and trademark dilution. This Court also has diversity jurisdiction over this action pursuant to 28 U.S.C. § 1332, as the parties are citizens of different states, and as the amount in controversy exceeds \$75,000.

4. The Court has personal jurisdiction over Facebook because it transacts business in the State of Tennessee. Venue is proper in this Court under 28 U.S.C. § 1391(d).

FACTS

5. Facepets is a concept that was created by animal loving individuals in Nashville, Tennessee who were interested in creating a social media opportunity for users to post videos and pictures and information about their pets. Specifically Facepets was designed to create an on-line community for registered users to participate in discussion, get feedback from their peers, form virtual communities, and engage in social networking featuring their pets and providing a website featuring technology enabling users to upload, view and download digital photos featuring their pets. In furtherance of this concept, the owners of Facepets set up the entity as a limited liability company, purchased the domain name “Facepets.com” and contracted with web designers to develop the infrastructure necessary for the formation of the aforementioned on-line community.

6. After creating a website, Facepets submitted application Ser. No. 85894240 to the United States Patent and Trademark Office (“USPTO”) on April 3, 2013, based on its bona fide intent to use the mark FACEPETS in commerce (the “Application” and the “Proposed Mark”). Information about the Application is attached hereto as **Exhibit 1**.

7. On August 7, 2013, the USPTO issued a Notice of Publication regarding Facepets’ pending trademark application (the “Publication”). In the Publication the USPTO stated that it had determined that the Proposed Mark appeared to be entitled to registration, and would thus be published in the *Official Gazette* on August 27, 2013 for the purpose of opposition by anyone who believes he will be damaged by the registration of the Proposed Mark. The issuance of the Publication was an indication by the USPTO that Examining Attorney assigned

to examine the application had searched the USPTO records, which would include applications and registrations for marks owned by Facebook, and found no similar registered or pending mark that would bar registration based on likelihood of confusion. A copy of the Notice of Publication is attached hereto as **Exhibit 2**.

8. Facebook requested an extension of the time to oppose the Proposed Mark to December 25, 2013, which the USPTO granted.

9. On or about December 3, 2013, counsel for Facepets received correspondence from counsel for Facebook arguing that the Proposed Mark, when used on or in connection with the services set forth in the Application, so resembles the marks set forth in Reg. Nos. 3041791, 3122052 and 3734637 (the “Facebook Marks”) as to be likely to cause confusion as to the source of origin or sponsorship and/or dilute the distinctiveness of our client’s marks. Facebook’s counsel asked that use of the Proposed Mark be discontinued and the Application be abandoned. A copy of this correspondence is attached hereto as **Exhibit 3**. Copies of Reg. No. 3041791, 3122052 and 3734637 are attached hereto as **Exhibit 4**.

10. Counsel for Facepets and counsel for Facebook followed up the above referenced correspondence with a discussion about extending the time for Facebook to oppose the Application. Facepets agreed to said request and the time for Facebook to oppose the Application was extended to February 23, 2014. A copy of the extension of time to oppose is attached hereto as **Exhibit 5**.

11. Facepets is a small business that is harmed by Facebook’s tactics wherein Facebook attempts to enforce its alleged trademark rights beyond a reasonable interpretation of the scope of the rights legitimately granted to Facebook.

12. On information and belief, Facebook has previously opposed a large number of applications filed by others for marks comprised of FACE or BOOK where the grounds of the opposition were dubious, weak or exaggerated.

13. On information and belief, Facebook is attempting to unfairly raise the cost of entry for Facepets to enter the marketplace with its concept.

14. On information and belief, Facebook has engaged in the practice of “trademark bullying” which is when a trademark owner uses its trademark rights to harass and intimidate another business beyond what the law might be reasonably interpreted to allow.

DECLARATORY JUDGMENT

12. Facepets repeats and realleges the allegations in the preceding paragraphs 1 through 11 as if fully set forth herein.

13. As a cause of action and ground for relief, Facepets alleges that it is entitled to a declaratory judgment that the Proposed Mark and the Facebook Marks do not share the same appearance.

14. As a cause of action and ground for relief, Facepets alleges that it is entitled to a declaratory judgment that the Proposed Mark and the Facebook Marks do not share the same sound.

15. As a cause of action and ground for relief, Facepets alleges that it is entitled to a declaratory judgment that the Proposed Mark and the Facebook Marks do not share the same meaning.

16. As a cause of action and ground for relief, Facepets alleges that it is entitled to a declaratory judgment that the services in connection with which the Proposed Mark is to be used and the services in connection with which the Facebook Marks are used are not closely related.

17. As a cause of action and ground for relief, Facepets alleges that it is entitled to a declaratory judgment that the conditions surrounding the marketing of the services in connection with which the Proposed mark is to be used and the services in connection with which the Facebook Marks are used are not such that they could be encountered by the same purchasers under circumstances that could give rise to the mistaken belief that they come from a common source.

18. As a cause of action and ground for relief, Facepets alleges that it is entitled to a declaratory judgment that it has not infringed any of the Facebook Marks.

19. As a cause of action and ground for relief, Facepets alleges that it is entitled to a declaratory judgment that it has not diluted any of Facebook Marks.

20. As a cause of action and ground for relief, Facepets alleges that it is entitled to a declaratory judgment that Facebook does not hold a right in gross or monopoly to prohibit all unconsented uses of the word FACE.

21. As a cause of action and ground for relief, Facepets alleges that it is entitled to a declaratory judgment that Facebook has engaged in the practice of “trademark bullying” which is when a trademark owner uses its trademark rights to harass and intimidate another business beyond what the law might be reasonably interpreted to allow

PRAYER FOR JUDGMENT AND RELIEF

WHEREFORE, Facepets requests judgment and relief as follows:

(i) That a judgment be entered that Facepets does not infringe any of the Facebook Marks;

(ii) That a judgment be entered that Facepets does not dilute any of the Facebook Marks;

(iii) That a judgment be entered that Facebook has engaged in the practice of “trademark bullying”;

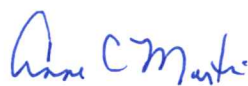
(iv) That Facepets be entitled to recover its attorneys’ fees and costs;

(v) Such other and further relief as the Court deems equitable and just under the circumstances.

Respectfully Submitted,

BONE McALLESTER NORTON PLLC

By:



Anne C. Martin, #15536
Paul W. Kruse, #013858
511 Union Street, Suite 1600
Nashville, TN 37219
Telephone: (615) 238-6300
Facsimile: (615) 238-6301
Attorneys for Facepets.com LLC