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Filing date: **02/24/2012**

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

Proceeding	91198355
Party	Defendant Think Computer Corporation
Correspondence Address	AARON GREENSPAN THINK COMPUTER CORPORATION 3260 HILLVIEW AVENUE PALO ALTO, CA 94304-1226 UNITED STATES legal@thinkcomputer.com
Submission	Motion for Sanctions
Filer's Name	Aaron Greenspan
Filer's e-mail	legal@thinkcomputer.com
Signature	/Aaron Greenspan/
Date	02/24/2012
Attachments	20120224.motionsanctions.pdf (9 pages)(411093 bytes)

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

FACEBOOK, INC., Opposer, v. THINK COMPUTER CORPORATION, Applicant.
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Opposition No. 91198355

Mark: FACEMAIL
Serial No.: 85/056,260
Published: September 28, 2010

MOTION FOR SANCTIONS

Pursuant to TBMP § 527.01(c), Applicant Think Computer Corporation (“Think”) hereby respectfully requests the imposition of sanctions on Opposer Facebook, Inc. and its counsel for failing to respond in a timely manner to a discovery request. Opposer’s failure was not the result of “excusable neglect,” and is a hallmark of the trademark bullying practices that the USPTO recently began to investigate.

On December 22, 2011, Applicant participated in the deposition of Larry Yu, Director of Corporate Communications for Facebook, Inc. Mr. Yu’s deposition did not go smoothly. Counsel for Opposer, Mr. Jeffrey Norberg, repeatedly refused to allow Mr. Yu to answer Applicant’s totally reasonable questions related to the FACEMAIL mark and the FACEBOOK marks that Opposer has asserted through these proceedings that it might be confused with. Only after conferring with additional counsel from Opposer near the end of the deposition did Mr. Norberg reverse his approach and allow Mr. Yu to answer some, but not all, of Opposer’s reasonable questions.

In addition, Mr. Norberg unilaterally declared the testimony of Mr. Yu “highly confidential,” even though there is absolutely nothing in the testimony that could be reasonably considered as such. This tactic, of making virtually everything confidential, has been frequently used by Opposer throughout its long history of litigation to hide the actual details of Facebook, Inc.’s founding, which would damage the company’s reputation were they to be made publicly available. On behalf of Applicant, Mr. Aaron Greenspan (who was at the time questioning the witness Mr. Yu) immediately objected and insisted that the deposition transcript not be deemed confidential. Mr. Norberg responded on the record, “We may not mark the entire transcript as confidential, and we will make a decision about that shortly. But we can talk about that off the record later. For now, we are designating the entire transcript highly confidential. And then I would like to take a break, a brief break, and then we’ll come back...” The issue was not addressed after the break.

Immediately after the deposition on December 22, 2011, Mr. Greenspan e-mailed Mr. Norberg and copied Mr. Norberg’s assistant, Maria Weiand, stating, “I’d like to request that the transcript of Mr. Yu's testimony not be designated confidential. There wasn't any confidential information discussed in the deposition.” No response was forthcoming.

Again on December 30, 2011, Mr. Greenspan e-mailed Mr. Norberg and Ms. Weiand, stating, “I received the transcript of the deposition of Larry Yu just now. It is marked ‘Highly Confidential,’ a designation you know that I object to. There is nothing confidential in this transcript. As I mentioned previously, and as you agreed (on the record) to discuss later, the transcript should not be marked confidential--only the exhibit involving the settlement agreement itself.” Again, Mr. Norberg did not respond.

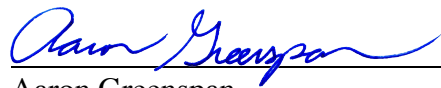
Again on January 20, 2012, Mr. Greenspan e-mailed Mr. Norberg and Ms. Weiand, stating, “We have an issue here in that you told me--on the record, in fact--that you would be

open to discussing the removal of the ‘highly confidential’ designation from this transcript. You have not followed through on that promise. As I stated earlier, the designation should be removed from the transcript as a whole, with the exception of the settlement agreement remaining confidential.” Again, Mr. Norberg did not respond.

Mr. Norberg is an experienced attorney, having practiced before the Trademark Trial and Appeal Board (“TTAB”) for many years. He is fully aware of the implications of his actions, and his decisions not to act, as the case may be. As such, his reprehensible and unethical behavior does not represent a minor error, or a simple mistake, but a deliberate attempt to harm Applicant (and the public) by violating not only his own guarantee on the record, but the rules of the TTAB which require parties to respond in a timely manner to requests related to discovery. Mr. Norberg is further aware of Applicant’s *pro se* status, and is therefore likely to have (mistakenly) believed that his deliberately unethical actions would be ignored.

WHEREFORE, Applicant respectfully submits that the TTAB issue sanctions against Opposer and Mr. Norberg in particular for failure to respond properly to a reasonable request related to discovery.

Respectfully submitted this 24th day of February, 2012.



Aaron Greenspan
Think Computer Corporation
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Palo Alto, CA 94306-1303
Phone: +1 415 670 9350
Fax: +1 415 373 3959
E-Mail: legal@thinkcomputer.com

CERTIFICATE OF SERVICE

I certify that on February 24, 2012, the foregoing MOTION FOR SANCTIONS is being electronically transmitted to:

Trademark Trial and Appeal Board
Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

It is further certified that on February 24, 2012, the foregoing MOTION FOR SANCTIONS is being served by electronic mail to:

Jeffrey T. Norberg
3175 Hanover Street
Palo Alto, California 94304-1130
jnorberg@cooley.com


By  _____
Aaron Greenspan
President & CEO
Think Computer Corporation
884 College Avenue
Palo Alto, CA 94306-1303

EXHIBIT A
**E-Mail Messages to Opposer's Counsel Jeffrey Norberg
Regarding Transcript Confidentiality**

From: Aaron Greenspan <aarong@thinkcomputer.com>
Subject: **Re: Facebook v. Think Computer Corporation/ FACEMAIL**
Date: December 22, 2011 12:40:49 PM PST
To: Jeffrey Norberg <jnorberg@cooley.com>
Cc: Maria Weiland <mweiland@cooley.com>
Message-Id: <4EF395D1.6090400@thinkcomputer.com>
User-Agent: Mozilla/5.0 (Macintosh; Intel Mac OS X 10.6; rv:8.0) Gecko/20111105 Thunderbird/8.0
Mime-Version: 1.0
References: <C9CCAC9FCD043C45AC96973582E85CA50298BED980@hnexch07.cooley.com> <4EE2B30F.1050008@thinkcomputer.com> <C9CCAC9FCD043C45AC96973582E85CA502AD472A0C@hnexch07.cooley.com>
In-Reply-To: <C9CCAC9FCD043C45AC96973582E85CA502AD472A0C@hnexch07.cooley.com>
Content-Type: multipart/alternative; boundary="-----000007050902080900010809"
▶ 1 Attachment, 1.8 KB



Mr. Norberg,

I'd like to request that the transcript of Mr. Yu's testimony not be designated confidential. There wasn't any confidential information discussed in the deposition.

Aaron



Aaron Greenspan
President & CEO
Think Computer Corporation

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e-mail aarong@thinkcomputer.com
web <http://www.thinkcomputer.com>

From: Aaron Greenspan <aarong@thinkcomputer.com>
Subject: Re: Facebook v. Think Computer Corporation/ FACEMAIL
Date: December 30, 2011 10:17:12 AM PST
To: Jeffrey Norberg <jnorberg@cooley.com>
Cc: Maria Weiland <mweiland@cooley.com>
Message-Id: <4EFE0028.6060607@thinkcomputer.com>
User-Agent: Mozilla/5.0 (Macintosh; Intel Mac OS X 10.6; rv:8.0) Gecko/20111105 Thunderbird/8.0
Mime-Version: 1.0
References: <C9CCAC9FCD043C45AC96973582E85CA50298BED980@hnexch07.cooley.com> <4EE2B30F.1050008@thinkcomputer.com> <C9CCAC9FCD043C45AC96973582E85CA502AD472A0C@hnexch07.cooley.com>
In-Reply-To: <C9CCAC9FCD043C45AC96973582E85CA502AD472A0C@hnexch07.cooley.com>
Content-Type: multipart/alternative; boundary="-----030700020001050805070701"
▶ 2 Attachments, 3.5 KB



Mr. Norberg,

I received the transcript of the deposition of Larry Yu just now. It is marked "Highly Confidential," a designation you know that I object to. There is nothing confidential in this transcript. As I mentioned previously, and as you agreed (on the record) to discuss later, the transcript should not be marked confidential--only the exhibit involving the settlement agreement itself.

Aaron



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web <http://www.thinkcomputer.com>

On 12/13/11 12:20 PM, Norberg, Jeffrey wrote:

Aaron:

Please call (562) 592-4581 and the receptionist will transfer you to the conference room where the deposition is being held.

Thanks,

Jeffrey T. Norberg

Cooley LLP • Five Palo Alto Square
3000 El Camino Real • Palo Alto, CA 94306-2155
Direct: 650-843-5889 • Fax: (650) 857-0663 • Cell: (415) 359-5656
Bio: www.cooley.com/jnorberg

From: Aaron Greenspan [<mailto:aarong@thinkcomputer.com>]
Sent: Friday, December 09, 2011 5:17 PM
To: Norberg, Jeffrey
Cc: Weiland, Maria
Subject: Re: Facebook v. Think Computer Corporation/ FACEMAIL

Mr. Norberg,

Please let me know the best way to go about setting up a telephone link for the deposition of Dr. Ford on Monday, December 19th.

Aaron



Think

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e-mail aarong@thinkcomputer.com

web <http://www.thinkcomputer.com>

On 11/28/11 12:30 PM, Norberg, Jeffrey wrote:
Aaron,

Please see attached notice of depositions.

Sincerely,

Jeffrey T. Norberg

Cooley LLP • Five Palo Alto Square

3000 El Camino Real • Palo Alto, CA 94306-2155

Direct: 650-843-5889 • Fax: (650) 857-0663 • Cell: (415) 359-5656

Bio: www.cooley.com/jnorberg

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From: Aaron Greenspan <aarong@thinkcomputer.com>
Subject: Re: Facebook/Think Computer Corporation (FACEMAIL)

Date: January 20, 2012 6:29:18 PM PST

To: Jeffrey Norberg <jnorberg@cooley.com>

Cc: Maria Weiland <mweiland@cooley.com>

Message-Id: <4F1A22FE.3060206@thinkcomputer.com>

Disposition-Notification-To: Aaron Greenspan <aarong@thinkcomputer.com>

User-Agent: Mozilla/5.0 (Macintosh; Intel Mac OS X 10.6; rv:9.0) Gecko/20111222 Thunderbird/9.0.1

Mime-Version: 1.0

References: <C9CCAC9FCD043C45AC96973582E85CA502B56BC5D2@hnexch07.cooley.com>

In-Reply-To: <C9CCAC9FCD043C45AC96973582E85CA502B56BC5D2@hnexch07.cooley.com>

Content-Type: multipart/alternative; boundary="-----050206080701030702030304"

1 Attachment, 1.8 KB



Jeff,

We have an issue here in that you told me--on the record, in fact--that you would be open to discussing the removal of the "highly confidential" designation from this transcript. You have not followed through on that promise. As I stated earlier, the designation should be removed from the transcript as a whole, with the exception of the settlement agreement remaining confidential.

Aaron



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web <http://www.thinkcomputer.com>

On 1/20/12 6:25 PM, Norberg, Jeffrey wrote:

Aaron,

Please see attached.

Sincerely,

Jeffrey T. Norberg

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3000 El Camino Real • Palo Alto, CA 94306-2155

Direct: 650-843-5889 • Fax: (650) 857-0663 • Cell: (415) 359-5656

Bio: www.cooley.com/jnorberg

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