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

Proceeding	91198355
Party	Plaintiff Facebook, Inc.
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Date	06/14/2012
Attachments	Yu REDACTED Testimony Deposition_ Part 2.pdf (46 pages)(1147703 bytes)

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1 (Recess.)

2 MR. GREENSPAN: This whole proceeding is
3 harassment. If you want to talk about harassment.
4 I thought we had a settlement as well.

5 MR. NORBERG: Are we back on the record?

6 THE REPORTER: Yes.

7 BY MR. GREENSPAN:

8 Q. Okay. Mr. Yu, are you familiar with the
9 grounds for opposition in this proceeding?

10 A. I am not.

11 Q. So you don't know why --

12 MR. NORBERG: Well, first of all, let me
13 object it's calling for a legal conclusion.

14 MR. GREENSPAN: No, it's not. I asked,
15 "Are you familiar with the ground for opposition in
16 this proceeding?"

17 MR. NORBERG: Again, calls for a legal
18 conclusion. You can answer if you know.

19 THE WITNESS: I do not know.

20 BY MR. GREENSPAN:

21 Q. So you don't know why Facebook is opposing
22 this trademark?

23 MR. NORBERG: Objection, argumentative.

24 BY MR. GREENSPAN:

25 Q. I'm sorry, this trademark application?

1 MR. NORBERG: Same objection.

2 THE WITNESS: I don't know.

3 BY MR. GREENSPAN:

4 Q. Do you think you should know?

5 MR. NORBERG: Objection, argumentative.

6 THE WITNESS: I'm not quite sure how to
7 answer that.

8 BY MR. GREENSPAN:

9 Q. Are you aware one of the grounds for
10 opposition is dilution of the famous mark?

11 A. No.

12 Q. Are you aware that my company, Think
13 Computer Corporation, owns a registered trademark
14 for FaceCash?

15 A. No, I don't know that.

16 Q. Are you aware that my company, Think
17 Computer Corporation, owns a registered trademark
18 for InterBook?

19 A. No, I don't know.

20 Q. Would you agree that FaceCash overlaps with
21 Facebook through the use of the "face" prefix?

22 MR. NORBERG: Objection, calls for a legal
23 conclusion, vague and ambiguous.

24 BY MR. GREENSPAN:

25 Q. A legal conclusion is simply asking if they

1 share the word "face"?

2 MR. NORBERG: You can answer if you know,
3 and doing so would not implicate any privileges --
4 attorney-client privilege or work product
5 privileges. If you need to ask any questions about
6 that before, we can go off the record to do that.

7 THE WITNESS: Sure. I'm just not sure --
8 again, I can make a fairly general observation. I'm
9 not sure exactly what the implications of the
10 observations are -- so, I'm a little --

11 MR. NORBERG: Don't speculate.

12 THE WITNESS: Okay. So -- yeah, without
13 knowing necessarily the -- the implications of what
14 that overlapping word means, yes, they both have the
15 word "face."

16 BY MR. GREENSPAN:

17 Q. And would you agree that Interbook overlaps
18 with Facebook with the use of the suffix?

19 MR. NORBERG: Same objection and caution.

20 THE WITNESS: Again, without not knowing
21 the particular details of how that may play out,
22 yes, "book" is a common word with both of those
23 terms.

24 BY MR. GREENSPAN:

25 Q. Why hasn't your employer argued that these

1 marks dilute his famous brand?

2 MR. NORBERG: Same objections and
3 caution.

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22 MR. GREENSPAN: Mark this as Exhibit --
23 THE REPORTER: 25 --
24 MR. GREENSPAN: -- 25, please.
25 (Exhibit 25 marked for identification.)

1 MR. NORBERG: It's 25?

2 THE REPORTER: Yes.

3 MR. GREENSPAN: And I would like to move
4 Exhibit 25 entered into evidence.

5 MR. NORBERG: Objection, lacks
6 foundation.

7 BY MR. GREENSPAN:

8 Q. Mr. Yu, could you please describe this
9 exhibit?

10 A. I have not seen this page before, but I am
11 happy to read the elements.

12 Q. Okay. Could you please read the text under
13 the video camera icon?

14 A. Yes, it says "FaceTime."

15 Q. Keep going, please.

16 A. "Be in two places at once."

17 Q. Okay. Are you familiar with the technology
18 company Apple Incorporated?

19 A. Yes.

20 Q. Are you familiar with the Apple product
21 called the iPhone?

22 A. Yes.

23 Q. Do you have an iPhone?

24 A. Yes.

25 Q. Are you familiar with Apple's iPhone

1 application FaceTime?

2 A. Yes, I've used it a handful of times.

3 Q. Okay. Have you ever seen a commercial for
4 FaceTime on television?

5 A. Yes, I have.

6 Q. Do you believe that FaceTime is a famous
7 mark?

8 MR. GREENSPAN: Objection, calls for a
9 legal conclusion.

10 THE WITNESS: Again, it's -- I'm not sure
11 how you would -- it would require me to make a
12 fairly broad characterization to say it's famous or
13 not.

14 BY MR. GREENSPAN:

15 Q. Would you agree that on the basis that
16 you've seen a TV commercial for it, that it's very
17 well-known.

18 A. I would agree that I've seen a TV
19 commercial.

20 Q. What is the name of the latest major
21 feature that Facebook released?

22 MR. NORBERG: Objection, vague and
23 ambiguous.

24 THE WITNESS: The name of the latest
25 Facebook feature that --

1 BY MR. GREENSPAN:

2 Q. Has Facebook just released a feature called
3 Timeline?

4 A. Yes, Facebook has released Timeline.

5 Q. Do you think it's confusing for Apple to
6 have a product called Facetime and Facebook to have
7 a product called Timeline?

8 MR. NORBERG: Objection, calls for a legal
9 conclusion.

10 THE WITNESS: Again, in terms of this the
11 context of this conversation, I am not a lawyer, so
12 I wouldn't be able to tell you how that may play on
13 it.

14 BY MR. GREENSPAN:

15 Q. Just as a casual observer, do you think it
16 might be confusing?

17 MR. NORBERG: Objection, calls for
18 speculation, lacks foundation, vague and ambiguous,
19 calls for a legal conclusion.

20 THE WITNESS: Again, it's hard for me to
21 know. There's some people who are going to be
22 pretty comfortable with technologies and some people
23 who are not. I don't know. I don't want to
24 speculate.

25 BY MR. GREENSPAN: ~

1 Q. So when you say that there are some people
2 who are going to be pretty comfortable with
3 technology, you mean that those people will be able
4 to distinguish between Facetime being Apple's and
5 Timeline being Facebook's?

6 MR. NORBERG: Again, same objections.

7 THE WITNESS: Sure. I think there are
8 people who will be able to distinguish Apple from
9 Facebook.

10 BY MR. GREENSPAN:

11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]

15 MR. GREENSPAN: Okay. Introduce this as
16 Exhibit 26. I would like to move --

17 THE REPORTER: Hold on.

18 MR. GREENSPAN: I'd like to move to enter
19 Exhibit 26 into evidence.

20 MR. NORBERG: Objection, lacks foundation,
21 relevance.

22 (Exhibit 26 marked for identification.)

23 BY MR. GREENSPAN:

24 Q. Mr. Yu, do you recognize the person in this
25 photograph?

1 A. I have not seen this particular photograph,
2 but yes.

3 Q. And who is the individual in this
4 photograph?

5 A. I believe that's Mark Zuckerberg.

6 Q. And he's the CEO of Facebook
7 Incorporated?

8 MR. NORBERG: Objection, relevance. You
9 can answer.

10 THE WITNESS: Yes.

11 BY MR. GREENSPAN:

12 Q. And what kind of phone is Mark using in
13 this photo?

14 MR. NORBERG: Objection, relevance. You
15 can answer.

16 THE WITNESS: It's a little blurry, but it
17 looks like an iPhone.

18 BY MR. GREENSPAN:

19 Q. Thank you. What kind of phone does Mark
20 use today?

21 MR. NORBERG: Objection, calls for
22 speculation.

23 THE WITNESS: I do not know what he uses
24 today. I don't know what date this photo was taken,
25 so I don't know what he uses today versus what --

1 (Cross-talking.)

2 BY MR. GREENSPAN:

3 Q. Well, I'm not implying that that photo is
4 from today.

5 But then I would like to introduce this as
6 Exhibit 27.

7 (Exhibit 27 marked for identification.)

8 MR. NORBERG: Give us a moment to take a
9 look at this. All right.

10 MR. GREENSPAN: And I would like to move to
11 enter this into evidence.

12 MR. NORBERG: And we object to Exhibit 27
13 on the grounds of relevance, lack of foundation.

14 BY MR. GREENSPAN:

15 Q. Mr. Yu, can you describe the photograph in
16 this exhibit briefly?

17 A. Sure. I have not seen this photo before,
18 though it looks like Mark is sitting in a chair on
19 stage at some conference.

20 Q. Is Mark wearing a jacket in this photo?

21 A. Yes, it appears as though he's wearing a
22 jacket.

23 MR. NORBERG: Again, I object to that as on
24 relevance grounds. Go ahead.

25 BY MR. GREENSPAN:

1 Q. And what kind of jacket is Mark wearing?

2 MR. NORBERG: Same objection.

3 BY MR. GREENSPAN:

4 Q. Meaning, who is the manufacturer of the
5 jacket, according to the logo on its front?

6 MR. NORBERG: Objection, calls for
7 speculation.

8 THE WITNESS: I can read the logo on the
9 front. I'm not sure who the manufacturer -- The
10 Northface.

11 BY MR. GREENSPAN:

12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]

16 Q. Do you believe that The Northface is a
17 famous mark?

18 MR. NORBERG: Objection, calls for a legal
19 conclusion.

20 THE WITNESS: Again, going back to our
21 earlier point, I'm not sure how one would define
22 fame. But certainly, is it a consumer brand? I
23 will agree it is a consumer brand.

24 BY MR. GREENSPAN:

25 Q. Do you own any Northface apparel?

1 A. Yes, I do.

2 Q. Do you know of any evidence of actual
3 confusions surrounding the name Facemail?

4 MR. NORBERG: Objection, calls for a legal
5 conclusion. I caution you not to disclose any
6 attorney-client communications. You can answer with
7 those cautions if you can.

8 THE WITNESS: I am not familiar with
9 Facemail, so I do not know.

10 BY MR. GREENSPAN:

11 Q. Strike -- move to strike that as
12 nonresponsive.

13 My question was, do you know of any actual
14 confusion that has been expressed to you by anyone
15 surrounding the name Facemail?

16 MR. NORBERG: Objection, vague and
17 ambiguous, calls for a legal conclusion. And I
18 caution you not to disclose any attorney-client
19 communication to the extent this would evoke that.
20 But you can answer if you understand the question.

21 THE WITNESS: What I can say is it's -- I
22 have not heard of the term, so I have not had a
23 conversation with anybody about Facemail. I don't
24 think I can adequately answer that question.

25 BY MR. GREENSPAN:

1 Q. Can you list any products that Facebook
2 currently offers or -- well, let's just stick with
3 that. Can you list any products that Facebook
4 currently offers that are one word start with "face"
5 and do not end with "book"?

6 MR. NORBERG: Objection, vague and
7 ambiguous. You can answer if you understand it.

8 THE WITNESS: Any products? When -- by

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9 MR. GREENSPAN: Okay, no further
10 questions.

11 MR. NORBERG: All right. Let's take a
12 short break. Five minutes. We'll go off the
13 record, and we'll come back, and if I have any
14 follow-up, we'll go from there. If not, we'll go
15 off the record.

16 (Recess taken.)

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11 MR. GREENSPAN: Okay. So give me a minute.

12 Q. Okay, Mr. Yu, can you describe again what
13 Exhibit 24 is?

14 MR. NORBERG: Objection, lacks foundation.
15 Go ahead, if you can.

16 THE WITNESS: I have not seen this before,
17 so I can read elements of it for you -- um --

18 BY MR. GREENSPAN:

19 Q. Can you read the heading?

20 A. Sure. It says, "Harvard College Facebook."

21 Q. And how is Facebook spelled here?

22 A. F-a-c-e-b-o-o-k.

23 Q. Is that how it is spelled on your
24 employer's website?

25 A. Yes.

1 Q. So it's exactly the same?

2 MR. NORBERG: Objection, vague and
3 ambiguous. You can answer, if you can.

4 THE WITNESS: Yes.

5 BY MR. GREENSPAN:

6 Q. And do you know of any other institutions
7 that have similar Facebooks, whether online or in
8 print?

9 MR. NORBERG: Objection, assumes a fact.

10 THE WITNESS: I do not know.

11 BY MR. GREENSPAN:

12 Q. You said you believe -- you were a
13 graduate, I believe, of the University of Colorado,
14 Boulder?

15 A. Yes.

16 Q. Did the University of Colorado have a
17 Facebook?

18 MR. NORBERG: Objection, assumes facts,
19 vague and ambiguous.

20 THE WITNESS: No, not when I was there.

21 BY MR. GREENSPAN:

22 Q. Does it have a Facebook today?

23 MR. NORBERG: Same objections.

24 THE WITNESS: I don't know.

25 BY MR. GREENSPAN:

1 Q. I'm going to ask some questions that I
2 think I asked already, but I'm not sure if you were
3 incorrectly instructed not to answer so.

4 A. Okay.

5 Q. Is it possible that Facebook Incorporated's
6 Facebook mark appears to be more famous because of
7 other institutions have used or are using Facebook
8 as a generic term to describe books and faces?

9 MR. NORBERG: Objection, compound, vague
10 and ambiguous, calls for a legal conclusion, calls
11 for expert testimony. You can answer, if you
12 understand the question.

13 THE WITNESS: Yeah, not being a lawyer, I'm
14 not sure that I'm qualified to answer that
15 question.

16 BY MR. GREENSPAN:

17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED] [REDACTED] [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED] [REDACTED]
25 [REDACTED]

1 [REDACTED]
2 [REDACTED] [REDACTED]
3 [REDACTED] [REDACTED]
4 [REDACTED] [REDACTED]
5 [REDACTED]
6 [REDACTED] [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED] [REDACTED]
10 [REDACTED] [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED] [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED] [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED] [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 MR. GREENSPAN: Okay, no further
25 questions.

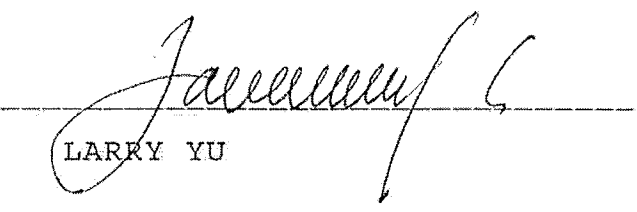
1 MR. NORBERG: And Facebook has no further
2 questions.

3 (Time noted: 11:53 a.m.)
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Highly Confidential

1 I declare under penalty of perjury under the
2 laws of the State of California that the foregoing
3 is true and correct.

4 Executed on JANUARY 20 ²⁰¹², ~~2011~~,
6 at MENLO PARK, CALIFORNIA.

11 
12 LARRY YU

1 STATE OF CALIFORNIA) ss:

2 COUNTY OF MARIN)

3

4 I, ASHLEY SOEVYN, CSR No. 12019, do hereby
5 certify:

6 That the foregoing deposition testimony was
7 taken before me at the time and place therein set
8 forth and at which time the witness was administered
9 the oath;

10 That the testimony of the witness and all
11 objections made by counsel at the time of the
12 examination were recorded stenographically by me,
13 and were thereafter transcribed under my direction
14 and supervision, and that the foregoing pages
15 contain a full, true and accurate record of all
16 proceedings and testimony to the best of my skill
17 and ability.

18 I further certify that I am neither counsel for
19 any party to said action, nor am I related to any
20 party to said action, nor am I in any way interested
21 in the outcome thereof.

22 IN THE WITNESS WHEREOF, I have transcribed my
23 name this 27th day of December, 2011.

24

25

ASHLEY SOEVYN, CSR 12019

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I N D E X

VOLUME I

THURSDAY, DECEMBER 22, 2011

WITNESS

EXAMINATION

LARRY YU

By Mr. Norberg

3

By Mr. Greenspan

21

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1	WITNESS INSTRUCTION NOT TO ANSWER	
2	PAGE	LINE
3	24	21
4	41	5
5	41	9
6	41	13
7	44	3
8	44	9
9	44	22
10	45	4
11	45	9
12	45	13
13	45	18
14	45	25
15	46	18
16	47	5
17	47	24
18	48	5
19	48	10
20	49	5
21	50	21
22	51	2
23	51	8
24	51	15
25	57	24

1	WITNESS INSTRUCTION NOT TO ANSWER	
2	PAGE	LINE
3	58	9
4	60	8
5	61	9
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1	DEPOSITION EXHIBITS		
2	LARRY YU		
3	NUMBER	DESCRIPTION	IDENTIFIED
4	Exhibit 2	Document entitled,	7
5		"Facebook Timeline"; 4 pages	
6			
7	Exhibit 3	Document entitled,	9
8		"Facebook Statistics"; 2 pages	
9			
10	Exhibit 4	Time Magazine cover	11
11		December 27, 2010 entitled,	
12		"Person of the Year Facebook's	
13		Mark Zuckerberg The Connector"	
14			
15	Exhibit 5	FT Magazine article entitled,	12
16		"Facebook's grand plan for the	
17		future" dated December 6, 2010	
18			
19	Exhibit 6	Business Day article entitled,	12
20		"Friending the World" dated	
21		July 8, 2010	
22			
23	Exhibit 7	San Francisco Chronicle article	13
24		entitled, "A bold new digital	
25		world" dated June 13, 2010	

1	DEPOSITION EXHIBITS		
2	LARRY YU		
3	NUMBER	DESCRIPTION	IDENTIFIED
4	Exhibit 8	Time Magazine cover entitled,	13
5		"Facebook and How It's Redefining	
6		Privacy" dated May 31, 2010	
7			
8	Exhibit 9	Sunday Business article from	14
9		The New York Times entitled,	
10		"Is Facebook Growing Up Too Fast?"	
11		dated March 2009	
12			
13	Exhibit 10	CNNMoney.com article entitled,	14
14		"CNN Money.com" dated March	
15		11, 2009	
16			
17	Exhibit 11	Newsweek magazine cover entitled,	15
18		"The Facebook Effect" dated	
19		August 27, 2007	
20			
21	Exhibit 12	Rolling Stone magazine cover	15
22		entitled, "Is Saving the World	
23		Killing Kiefer Sutherland?" dated	
24		April 20, 2006	
25			

1	DEPOSITION EXHIBITS		
2	LARRY YU		
3	NUMBER	DESCRIPTION	IDENTIFIED
4	Exhibit 13	Time magazine cover entitled,	21
5		"Why Young Voters Care Again"	
6		dated February 11, 2008	
7		(Withdrawn as an exhibit by Mr. Norberg)	
8			
9	Exhibit 14	Print out entitled, "Brand	17
10		Permissions Center" printed	
11		11/2/2010; 1 page	
12			
13	Exhibit 15	CNN Money article entitled,	19
14		"Analysts Weigh in on Effect of	
15		FaceMail on Google, Yahoo,	
16		others dated November 16, 2010	
17			
18	Exhibit 16		20
19			
20			
21			
22	Exhibit 17	Facebook Messages printout	27
23		of Aaron Greenspan; 2 pages	
24			
25			

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1	DEPOSITION EXHIBITS		
2	LARRY YU		
3	NUMBER	DESCRIPTION	IDENTIFIED
4	Exhibit 18	Facebook Messages page of	31
5		Aaron Greenspan; 1 page	
6			
7	Exhibit 19	Article entitled, "The Facebook	39
8		Blog Our Commitment to the Facebook	
9		Community" dated November 29, 2011;	
10		3 pages	
11	Exhibit 20	Kirkland House My Account	43
12		Page of Mark Zuckerberg; 1 page	
13			
14	Exhibit 21	Kirkland House My Account	44
15		page; 2 pages	
16			
17	Exhibit 22	Document entitled, Think Computer	46
18		Corporation v. Facebook,	
19		Inc. Timeline of Events; 5 pages	
20			
21	Exhibit 23	Article entitled, "The Apologies	50
22		of Zuckerberg: A Retrospective"	
23		dated November 29, 2011; 3 pages	
24			
25			

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DEPOSITION EXHIBITS

LARRY YU

NUMBER	DESCRIPTION	IDENTIFIED
Exhibit 24	Harvard College Facebook printout; 1 page	55
Exhibit 25	Article entitled, "FaceTime Be in Two Places at Once" 2 pages	61
Exhibit 26	Black and White picture of Mark Zuckerberg; 1 page	68
Exhibit 27	Coolspotters article entitled, Mark Zuckerberg and The North Face Windwall 1 Jacket"; 1 page	67

Errata Sheet

**IN THE MATTER OF APPLICATION
SERIAL NO.: 85056260
FOR THE MARK: FACEMAIL**

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

**Deposition of Larry Yu
Taken December 22, 2011**

Page & Line Number	Correction
3:21	Capitalize “corporate communications”
4:8	Delete “of”
4:15	Change “N” to “&” in “MNA”
6:5	Remove “method”
6:9	Capitalize “wall”
11:15	Change “Giga Home” to “GigaOm”
13:12	Change “were” to “have”
14:15-16	Should read “It's a feature about Facebook”
17:5	Capitalize “fall”
25:2	“TTAB”
25:14	Insert “can” between “there” and “often”
29:9	Change “reassemble” to “resemble”
42:21	Insert “to” between “going” and “instruct”
43:18	Capitalize as “House System”
43:21	Capitalize “House System”
60:3	Delete “s” after “that”
60:23	Add “know” at the end of the sentence.

Date: 11/20/12

Signature: 