



FORM 32
(RULE 8-1 (4))

No. VLC-S-S-122316

Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

DEBORAH LOUISE DOUEZ

PLAINTIFF

AND:

FACEBOOK, INC.

DEFENDANT

Brought pursuant to the *Class Proceedings Act*, R.S.B.C. 1996, c. 50

NOTICE OF APPLICATION

Name of applicant: Facebook, Inc.

To: Deborah Louise Douez

TAKE NOTICE that an application will be made by the applicant to the Honourable Madam Justice Griffin at the Supreme Court of British Columbia, 800 Smithe Street, Vancouver, British Columbia, V6Z 2E1, on January 15, 2013 at 10 a.m. for the order set out in Part 1 below.

Part 1: ORDER SOUGHT

Facebook Inc. ("**Facebook**") respectfully requests that this Honourable Court:

1. Decline to exercise jurisdiction over this Action;
2. In the alternative, decline to exercise jurisdiction over that part of this Action related to the injunction sought by the proposed representative plaintiff, Deborah Louise Douez ("**Douez**");

3. Stay this Action pending further order of this Honourable Court;
4. Hear this Application on January 15, 2013 or on such other date as this Honourable Court may direct, prior to the Plaintiff's pending Certification Application;
5. If necessary, expand the time for bringing this application following Facebook's filing of the Jurisdictional Response (as defined herein); and
6. Such further and other relief as counsel may seek and this Honourable Court may grant.

Part 2: FACTUAL BASIS

1. Facebook owns and operates facebook.com, a social networking website that allows users ("Users") to connect with friends and family, to discover what's going on in the world, and to share and express what matters to them;
2. Access to the website is free to anyone in the world who is willing to abide by the terms and conditions contained in Facebook's Statement of Rights and Responsibilities (the "Facebook Terms");
3. Facebook is a for-profit company that generates revenue from, among other means, selling advertising;
4. In or about January, 2011, Facebook introduced "Sponsored Stories", a form of advertising, across its global operations;
5. On March 29, 2012, Douez filed a notice of claim (the "Claim") commencing this Action challenging her alleged appearance in a Sponsored Story;

6. An initial case management hearing was held in this Action on July 30, 2012, at which Facebook's counsel advised this Honourable Court of its intention to challenge jurisdiction;

7. On September 28, 2012, Facebook, filed a jurisdictional response with this Honourable Court (the "**Jurisdictional Response**"); and

8. Such further and other grounds as counsel may advise and this Honourable Court may permit.

Part 3: LEGAL BASIS

1. Under the Facebook Terms, Douez (and all of the proposed class members) "agree to submit to the personal jurisdiction of the courts located in Santa Clara County, California" and further agree that any disputes:

(a) Will be resolved "exclusively in a state or federal court located in Santa Clara County [California]" (the "**Forum Selection**"); and

(b) Will be governed by the laws of the State of California, "without regard to conflict of law provisions" (the "**Choice of Law**");

2. Facebook respectfully submits that this Honourable Court ought to enforce the Forum Selection and decline to exercise its jurisdiction over the B.C. Action, for reasons that include:

(a) The existence of a Forum Selection is a sufficient reason for a court to decline jurisdiction;

(b) The Facebook Terms form part of a contract which is binding and enforceable against Douez and other Facebook users;

- (c) The interest in fostering certainty in international commercial contracts favours enforcement of the Forum Selection, which Facebook uses to manage its global risk exposure; and
- (d) Nothing in the *Privacy Act*, R.S.B.C. 1996, c. 373 expressly prevents Facebook users like Douez from agreeing to have their disputes heard elsewhere;

3. Further and in the alternative, Facebook respectfully submits that this Honourable Court ought not to exercise its jurisdiction over this Action, pursuant to Section 11 of the *Court Jurisdiction and Proceedings Transfer Act*, S.B.C. 2003, c. 28, because the California Court is a more appropriate forum for reasons that include:

- (a) The Forum Selection in the Facebook Terms;
- (b) California law is to be applied to issues in the proceeding, “without regard to conflict of law provisions,” pursuant to the Choice of Law election;
- (c) Virtually all of Facebook’s employees involved with developing Sponsored Stories and the related documents and data are located in California; and
- (d) Douez seeks an injunction from this Honourable Court against a Delaware corporation with its headquarters and principal place of business in Menlo Park, California;

4. Further, Facebook respectfully submits that it is appropriate to hear this Jurisdiction Application in advance of the Certification Application; and

5. Such further and other authorities as counsel may advise and this Honourable Court may permit.

Part 4: MATERIAL TO BE RELIED ON

1. The Affidavit of Sandeep N. Solanki, made September 28, 2012;
2. The written submissions of Facebook (to be filed on or before November 9, 2012);
3. The Jurisdictional Response;
4. The pleadings and proceedings filed in this Action; and
5. Such further and other materials or evidence as counsel may advise and this Honourable Court may permit.

The applicant(s) estimate(s) that the application will take 1 day.

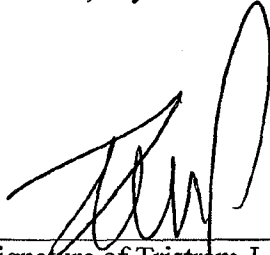
- This matter is within the jurisdiction of a master.
- This matter is not within the jurisdiction of a master.

TO THE PERSONS RECEIVING THIS NOTICE OF APPLICATION: If you wish to respond to this notice of application, you must, within 5 business days after service of this notice of application or, if this application is brought under Rule 9-7, within 8 business days after service of this notice of application,

- (a) file an application response in Form 33,
- (b) file the original of every affidavit, and of every other document, that
 - (i) you intend to refer to at the hearing of this application, and
 - (ii) has not already been filed in the proceeding, and
- (c) serve on the applicant 2 copies of the following, and on every other party of record one copy of the following:
 - (i) a copy of the filed application response;

- (ii) a copy of each of the filed affidavits and other documents that you intend to refer to at the hearing of this application and that has not already been served on that person;
- (iii) if this application is brought under Rule 9-7, any notice that you are required to give under Rule 9-7 (9).

Date: 28-Sep-2012
[dd/mmm/yyyy]



Signature of Tristram J. Mallett/
Kelly Osaka/W.K. Levi Cammack
Osler, Hoskin & Harcourt LLP
 Applicant Lawyers for Applicant

To be completed by the court only:

Order made

- in the terms requested in paragraphs _____ of Part 1 of this notice of application
- with the following variations and additional terms:

Date: _____

Signature of Judge Master

APPENDIX

THIS APPLICATION INVOLVES THE FOLLOWING:

- discovery: comply with demand for documents
- discovery: production of additional documents
- other matters concerning document discovery
- extend oral discovery
- other matter concerning oral discovery
- amend pleadings
- add/change parties
- summary judgment
- summary trial
- service
- mediation
- adjournments
- proceedings at trial
- case plan orders: amend
- case plan orders: other
- experts