

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION**

REMBRANDT SOCIAL MEDIA, LP

Plaintiff,

v.

FACEBOOK, INC.

Defendant.

Case No. 1:13cv158 (TSE/TRJ)

NOTICE OF APPEAL

Notice is hereby given pursuant to Federal Rule of Appellate Procedure 3 that Plaintiff Rembrandt Social Media, LP (“Plaintiff” or “Rembrandt”) appeals to the United States Court of Appeals for the Federal Circuit, pursuant to 28 U.S.C. § 1295(a)(1), the final judgment in this case and from all underlying decisions, orders, and rulings related to, supported, or incorporated into the final judgment as adverse to Plaintiff, including specifically but not limited to the following: (1) the Court’s August 8, 2014 Order denying Plaintiff’s Rule 50(b) motion for judgment as a matter of law and Plaintiff’s Rule 59 motion for a new trial (Dkt. No. 585), including the rulings from the bench on the same motions; (2) the Judgment entered on June 13, 2014 (Dkt. No. 525); and (3) the following decisions, orders, and rulings adverse to Plaintiff:

The Court’s Orders and rulings related to liability

- The Court’s December 3, 2013 Order granting Facebook’s *Daubert* motion regarding Dr. Golbeck (Dkt. No. 352);

- The Court's refusal to grant Rembrandt's Rule 50(a) motion for Judgment as a Matter of Law on infringement, which the Court effectively denied by allowing the issue to go to the jury (Trial Tr. 06/11/14 PM, 120:18-23);
- The Court's denial of Rembrandt's Rule 50(a) motion for Judgment as a Matter of Law of no invalidity (Trial Tr. 06/11/14 PM, 123:8-9);
- The Court's denial during trial of Rembrandt's Pre-Verdict Motion for a New Trial (Dkt. No. 516) (Trial Tr. 06/12/14 AM, 16:10);
- The Court's refusal to include a "teaching away" jury instruction (Trial Tr. 06/12/14 PM, pages 19-20);
- All of the Court's evidentiary rulings at trial that were adverse to Rembrandt, including specifically but not limited to:
 - the Court's Order during trial denying Rembrandt's motion to strike Mr. Parker's testimony about his demonstrative (Trial Tr. 06/11/14 AM, 53:4-14);
 - the Court's denial during trial of Rembrandt's request to strike the Court's questioning and answers of Mr. Parker and that an instruction be given (Trial Tr. 06/11/14 AM, 108:13-19);
 - the Court's limitation during trial on Dr. Golbeck's testimony about Mr. Parker's demonstrative (Trial Tr. 06/12/14 AM, 72:21-74:5);

The Court's Orders and rulings related to damages

- The Court's September 3, 2013 Order striking the supplemental expert reports of Dr. Van Liere and Mr. Malackowski (Dkt. No. 218);
- The Court's December 3, 2013 Order granting Defendant's motion in limine 3 and denying Plaintiff's motion in limine 7 that sought to have Mr. Malackowski and Dr. Van Liere testify regarding the opinions in their supplemental reports (Dkt. No. 362);
- The Court's December 3, 2013 Order granting Defendant's motion to exclude the testimony of Mr. Malackowski (Dkt. No. 351) and the accompanying Memorandum Opinion (Dkt. No. 350);
- The Court's Orders denying Plaintiff's Motion for Pretrial Relief (Dkt. No. 377) and otherwise precluding Rembrandt from offering any evidence of damages, including specifically but not limited to:
 - the Court's Order of April 21, 2014 that (1) denied reconsideration of its December 3, 2013 Order and (2) denied Rembrandt's request to submit a supplemental expert report by Mr. Malackowski (Dkt. No. 395),

- the Court's Order of April 25, 2014 that (1) denied Rembrandt's request to add a presentation to the exhibit list, (2) denied Rembrandt's motion to compel Facebook to produce any documents relating to the presentation, and (3) granted Facebook's motion to exclude Rembrandt's supplemental Rule 26 disclosure that presented the "click rate" theory (Dkt. No. 431);
- the Court's Order of May 6, 2014 that denied Rembrandt's request to have Mr. Malackowski present his "per user" theory (Dkt. No. 435);
- the Court's oral Order from the bench on June 6, 2014 that denied the remainder of Rembrandt's requested relief seeking to put on damages evidence or a damages theory;
- the confirmation by the Court just prior to opening statements that no damages evidence would be allowed at trial (Trial Tr. 06/09/14 PM, pages 3-8); and
- The Court's oral Orders from the bench at the June 6, 2014 hearing granting all of Facebook's motion in limine filed on May 8, 2014 (Dkt. No. 437).

Respectfully submitted,

FISH & RICHARDSON P.C.

Dated: September 5, 2014

By: /s/ Daniel R. Gopenko

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CERTIFICATE OF SERVICE

I hereby certify that on the 5th day of September, 2014, I will electronically file the foregoing **NOTICE OF APPEAL** with the Clerk of the Court using the CM/ECF system, which will then send a notification of such filing to the following:

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/s/ Daniel R. Gopenko

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