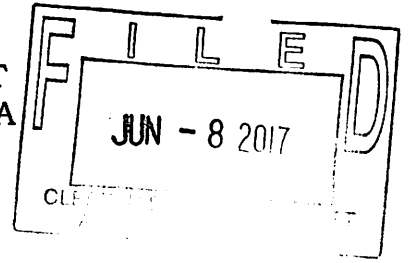


IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Alexandria Division



JEREMY C. SOUTHGATE d/b/a  
SOUND SPARK STUDIOS,

*Plaintiff,*

- v. -

FACEBOOK, INC.; and  
INSTAGRAM, LLC,

*Defendants.*

Civil Action No. 1:17-cv-048

**JURY TRIAL DEMANDED**

**COMPLAINT**

I, JEREMY C. SOUTHGATE d/b/a SOUND SPARK STUDIOS, *PRO SE*, Plaintiff, hereby commence this Civil Action against FACEBOOK, INC., and INSTAGRAM, LLC (subsidiary of FACEBOOK, INC.), Defendants, for trademark infringement and unfair competitive practices, copyright infringement, and restraint and monopolization of Commerce. I respectfully allege as follows:

**JURISDICTION & VENUE**

1. This District Court has subject-matter jurisdiction pursuant to 15 U. S. C. § 4 (Sherman Act); 15 U. S. C. § 1121 (Lanham Act); 28 U. S. C. § 1331 (Federal Question); 28 U. S. C. § 1337 (Commerce and antitrust regulations); 28 U. S. C. § 1338(b) (copyrights, ... trademarks, and unfair competition).

2. This venue is proper pursuant to 28 U. S. C. § 1391(b)(2) and Local Rule 3(B)(1), as substantial events material to the claims occurred at the United States Patent and Trademark Office in Alexandria, Virginia.

3. This venue is also proper pursuant to 15 U. S. C. § 15(a).

### **PARTIES**

4. Plaintiff JEREMY C. SOUTHGATE is an individual, currently residing in the State of Massachusetts, doing business with the United States Patent and Trademark Office in Alexandria, Virginia, and in interstate commerce generally as “SOUND SPARK STUDIOS”.

5. Defendant FACEBOOK, INC. (“FACEBOOK”), is a Delaware corporation with a principal place of business in Menlo Park, California; can be found doing business with the U.S. Patent and Trademark Office in Alexandria, Virginia, and in interstate commerce generally; and is directly, contributorily, and vicariously responsible for the actions of its subsidiary INSTAGRAM, LLC.

6. Defendant INSTAGRAM, LLC (“INSTAGRAM”), is a Delaware limited liability company which is a subsidiary of FACEBOOK, INC.<sup>1</sup> and can be found doing business with the United States Patent and Trademark Office in Alexandria, Virginia, and in interstate commerce generally.

### **PLAINTIFF’S FEDERAL REGISTRATIONS**

7. Plaintiff JEREMY C. SOUTHGATE is the sole proprietor of United States Trademark Registration No. 4,606,004 (EXHIBIT ONE).

8. Plaintiff JEREMY C. SOUTHGATE is the sole proprietor of United States Service Mark Registration No. 4,711,931 (EXHIBIT TWO).

9. Plaintiff JEREMY C. SOUTHGATE is the sole proprietor of United States Service Mark Registration No. 5,047,726 (EXHIBIT THREE).

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<sup>1</sup> <https://www.sec.gov/Archives/edgar/data/1326801/000132680117000007/fb-12312016x10kexhibit211.htm>

10. Plaintiff JEREMY C. SOUTHGATE is the sole proprietor of United States Copyright Registration No. VA1,938,870 (EXHIBIT FOUR).

11. Plaintiff JEREMY C. SOUTHGATE is the sole proprietor of United States Copyright Registration No. VA2,026,048 (EXHIBIT FIVE).

12. The forgoing Federal Registrations (§§ 7 - 11) are collectively referred-to as the “intellectual property” of Plaintiff JEREMY C. SOUTHGATE doing business as SOUND SPARK STUDIOS.

**PLAINTIFF’S PROPERTY RIGHTS AS A MATTER OF LAW**

13. Via U. S. Trade and Service-mark Registrations Nos. 4,606,004 and 4,711,931, Plaintiff JEREMY C. SOUTHGATE owns a mark comprising:

The color(s) red, blue and gold is/are claimed as a feature of the mark. The mark consists of a gold encircled eight-point star, two red ellipses, and "Sound Spark Studios" in blue.

14. Via U. S. Service-mark Registration No. 5,047,726, Plaintiff JEREMY C. SOUTHGATE owns a mark comprising:

The color(s) gold, red, and blue is/are claimed as a feature of the mark. The mark consists of a gold eight-point star outline encircled by a gold ring; two red ellipse outlines emanating from the star; three triangularly spread words "SOUND", "SPARK", and "STUDIOS" in blue - all concentrically arranged. White indicates transparency.

15. Pursuant to 15 U. S. C. § 1072: “Registration of a mark on the principal register ... shall be constructive notice of the registrant’s claim of ownership thereof.”

16. By Plaintiff’s trade and service-mark registrations on September 16, 2014; March 31, 2015; and September 27, 2016, respectively, FACEBOOK and INSTAGRAM have received “constructive notice” of Plaintiff JEREMY C.

SOUTHGATE's "claim of ownership" of his trade and service-mark intellectual property.

17. Prior to and at times after the Cause of Action, FACEBOOK and INSTAGRAM directly or via its agents had actual notice of Plaintiff JEREMY C. SOUTHGATE's property rights because certificates of registration were transmitted to them, in the course of business, since as early as 2014.

18. Pursuant to 15 U. S. C. § 1057(b), Plaintiff JEREMY C. SOUTHGATE's senior trademark and service-mark Certificates of Registration: "shall be prima facie evidence of the validity of the registered mark and of the registration of the mark, of the owner's ownership of the mark, and of the owner's exclusive right to use the registered mark in commerce on or in connection with the goods or services specified in the certificate, subject to any conditions or limitations stated in the certificate."

19. By Plaintiff's trade and service-mark registrations, Plaintiff JEREMY C. SOUTHGATE has "*exclusive right* to use the registered mark[s] in commerce on or in connection with the goods or services" (emphasis added), *e. g.* 'musical sound recordings', 'provision of information relating to music' and 'product research and development', "specified in the certificate."

20. Pursuant to 15 U. S. C. § 1057(c), Plaintiff JEREMY C. SOUTHGATE, having obtained trademark and service-mark registrations on the principal register, enjoys that "the filing of the application to register such mark shall constitute constructive use of the mark, conferring a right of priority, nationwide in effect, on or in connection with the goods or services

specified in the registration against any other person...” (emphasis added).

21. For his trademark and service-mark intellectual property, Plaintiff JEREMY C. SOUTHGATE enjoys “*a right of priority, nationwide in effect, on or in connection with, [inter alia, ‘musical sound recordings’, ‘provision of information relating to music’, and ‘product research and development’]*” dating back to the application to register ® No. 4,606,004 filed on June 28, 2012.

22. Pursuant to 17 U. S. C. § 106, Plaintiff JEREMY C. SOUTHGATE enjoys “exclusive rights” as the Owner of his copyrights, including the right “to prepare derivative works based upon the copyrighted work.”

23. Plaintiff JEREMY C. SOUTHGATE enjoys the *exclusive right* to derive an original, inherently distinctive national brand identity from his collection of intellectual property.

24. Plaintiff JEREMY C. SOUTHGATE’s rights are supported by both statutes and the common law.

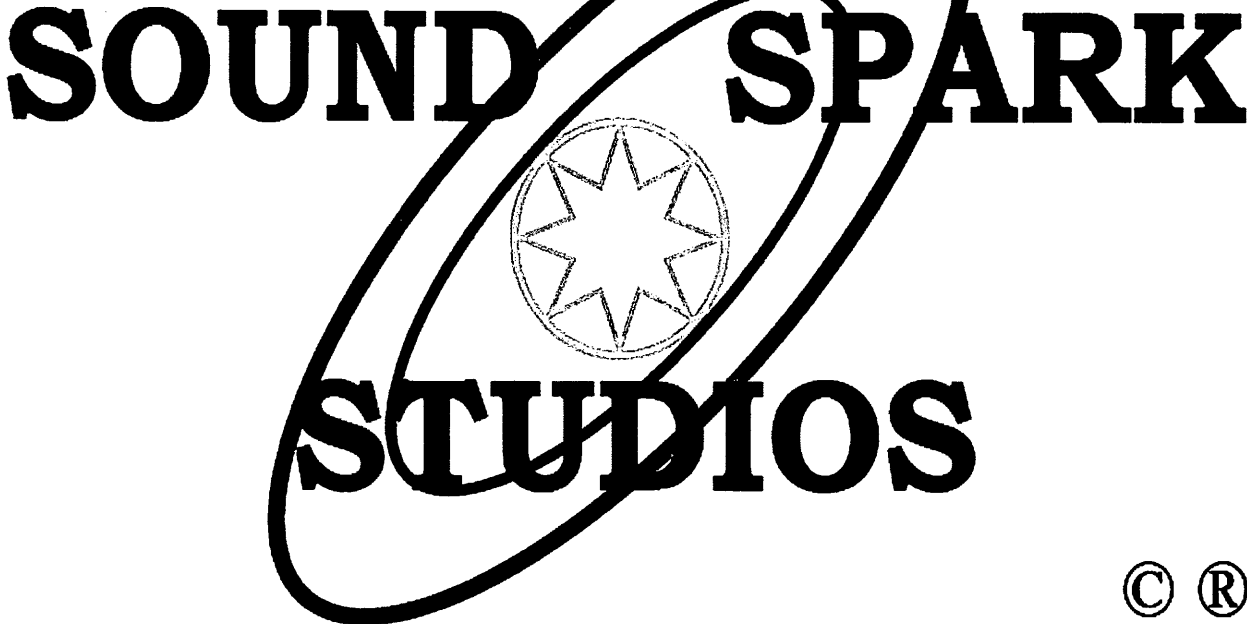
25. Plaintiff JEREMY C. SOUTHGATE reserves all of his rights.

**AUTHORIZED USE OF PLAINTIFF’S INTELLECTUAL PROPERTY**

26. Plaintiff uses his own intellectual property at the website “soundsparkstudios.com” (in interstate commerce) since 2011.

27. Plaintiff also uses, for his own artistic expression in a tangible medium, the following copyrighted (1) “SOUND SPARK STUDIOS” 2-D Artwork (Copyright Registration No. VA1,938,870) and (2) “SOUND SPARK STUDIOS SKY” Photograph (Copyright Registration No. VA2,026,048), jointly and separately. Plaintiff is the author and copyright-holder of the following:

(1)

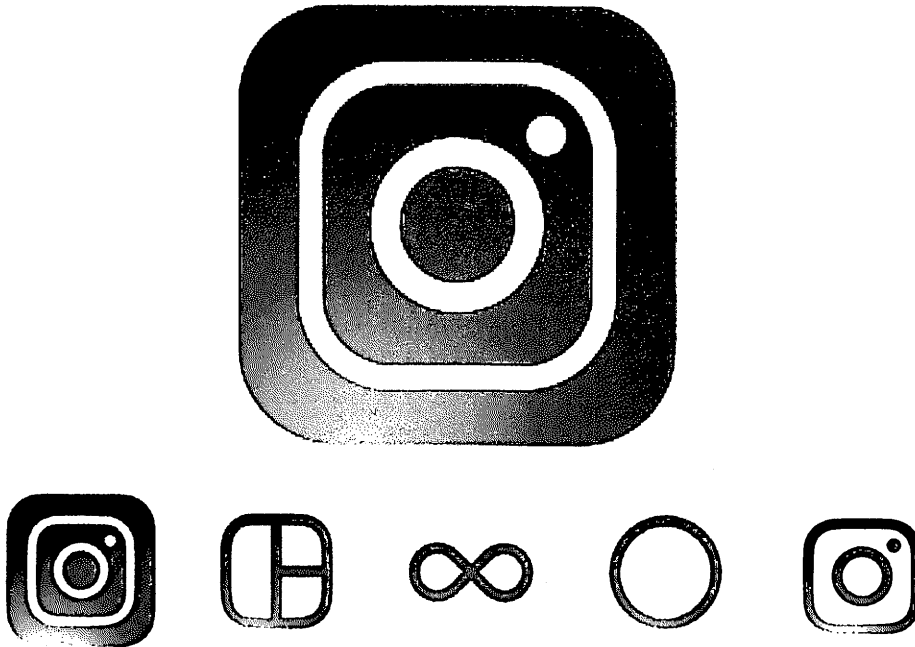


(2)

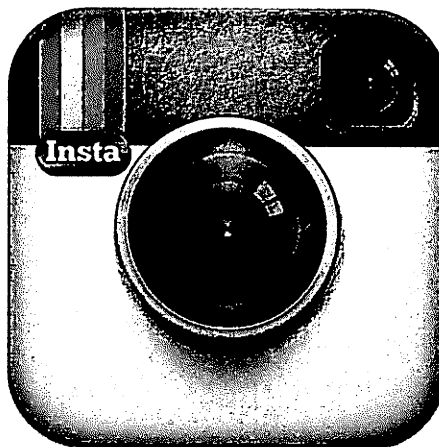


**CAUSE OF ACTION:  
LIKELIHOOD OF CONFUSION, MISTAKE, OR DECEPTION  
AND INFRINGEMENT**

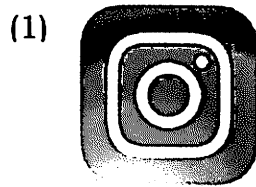
28. The cause of this Civil Action is that, on May 11, 2016, FACEBOOK, INC.'s subsidiary "INSTAGRAM" announced a "new look" with a new set of logos ("infringing logo") and a re-brand marketing campaign:



29. Prior to the rebranding, the well-known logo ("legacy logo") used by INSTAGRAM was:

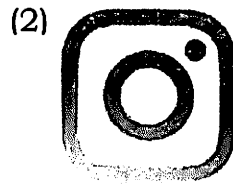


30. In November 2016, *after* Plaintiff sent *certified notice* of his rights (¶ 44) to Defendants: INSTAGRAM, LLC, filed applications at the United States Patent and Trademark Office (Alexandria, VA), for the following<sup>2</sup>:



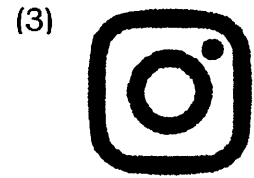
**Serial Nos.**

87242332  
87035927  
87033951  
87033956  
87033954\*  
87033952\*  
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**Serial Nos.**

87035970  
87035947\*  
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87035950  
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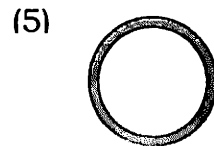
**Serial Nos.**

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87234701  
87234707  
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87234706\*  
87234703\*  
87234699\*  
87166564



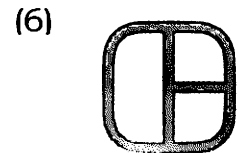
**Serial No.**

87033832\*



**Serial No.**

87033833\*



**Serial No.**

87033830\*

31. The above marks (1), (2), and (3) express merely generic depictions of “a photographic camera” (EXHIBIT SIX; VIDEO EXHIBIT ONE) that no one can associate with INSTAGRAM exclusively.

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<sup>2</sup> With respect to the marks/serials having an asterisk (\*), Plaintiff’s Letters of Protest, evidencing probable descriptiveness and sent to the United States Patent and Trademark Office (Arlington, VA), were “accepted for the record.”

*For judicial notice, go to: “<http://tess2.uspto.gov>”, search by serial number, click “TSDR”, click “Documents,” find and click “Administrative Response” (multiple pages of evidence).*



32. The above mark (4) expresses a generic “infinity symbol” (EXHIBIT SEVEN) that no one can associate with INSTAGRAM exclusively.

33. The above mark (5) expresses a generic “circle shape” (EXHIBIT EIGHT) that no one can associate with INSTAGRAM exclusively.

34. The above mark (6) expresses a generic “collage icon” (EXHIBIT NINE) that no one can associate with INSTAGRAM exclusively.

35. The only registrable, *trademark-recognizable* aspect of the foregoing infringing marks (1 - 6) would be the secondary trademark meaning and creative expression of a color scheme of perceivable gold, red, and blue *in conjunction with* other design elements conveying secondary meaning, such as the ‘radiance’ of a yellow star fading to red, then blue; and two concentric elements, two circles or ellipses — but any such “secondary meaning” here is already claimed as the intellectual property of Plaintiff JEREMY C. SOUTHGATE doing business as SOUND SPARK STUDIOS.

36. By means of its vast financial and commercial power, FACEBOOK and INSTAGRAM have led a re-branding campaign in interstate commerce with the intent to leverage famous trademark recognition of the INSTAGRAM legacy logo into purported *trademark recognition* of the generic shapes (circles, ellipses, ovals) and generic colors (rainbow, visible light spectrum/gradient) in the legacy logo.

37. The intent of FACEBOOK and INSTAGRAM is knowingly and willfully to create *trademark recognition of elements comprising Plaintiff’s intellectual property to be associated with them*, to infringe upon the *inherently*

*distinctive trademark design* of radiating colors and elements of Plaintiff JEREMY C. SOUTHGATE's intellectual property.

38. FACEBOOK and INSTAGRAM are liable for "reverse confusion" because the Defendants' infringement is likely to damage and deprive Plaintiff JEREMY C. SOUTHGATE of his "exclusive right to use the registered mark" (15 U. S. C. § 1057(b)) altogether, and the Public is likely to believe, mistakenly, that Plaintiff JEREMY C. SOUTHGATE's intellectual property actually belongs to FACEBOOK.

*i. See Microstrategy Inc. v. Motorola, Inc.*, 245 F.3d 335 (4th Cir. 2001) quoting:

*A H Sportswear, Inc. v. Victoria's Secret Stores, Inc.*, 237 F.3d 198, 228 (3d Cir. 2000) ("[R]everse confusion occurs when the junior user saturates the market with a similar trademark and overwhelms the senior user" (citations and internal quotation marks omitted)).

*ii. See also Valador, Inc. v. Htc Corp.*, Case No. 1:16-cv-1162 (E.D. Va. Mar. 15, 2017) citing *Ameritech, Inc. v. Am. Info. Techs. Corp.*, 811 F.2d 960, 964 (6th Cir. 1987):

In a reverse confusion trademark case, "[t]he public comes to assume the senior user's products are really the junior users or that the former has become somehow connected to the latter." *Ameritech, Inc. v. Am. Info. Techs. Corp.*, 811 F.2d 960, 964 (6th Cir. 1987). In this respect, the senior user "loses the value of the trademark—its product identity, corporate identity, control over its goodwill and reputation, and ability to move into new markets." *Id.*

39. The Public, via its agency of government the United States Patent and Trademark Office, has, in actuality, already mistakenly permitted INSTAGRAM infringing marks to register, despite their being deceptively similar to Plaintiff JEREMY C. SOUTHGATE's intellectual property.

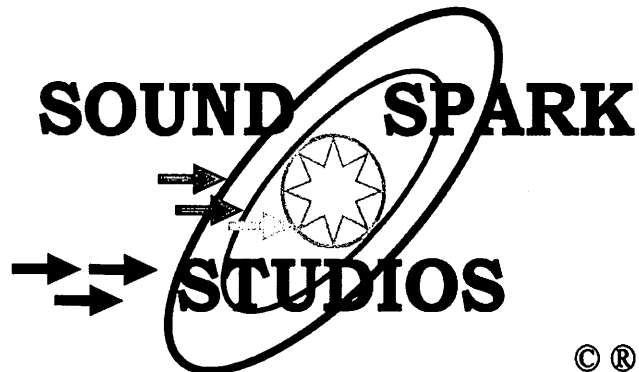
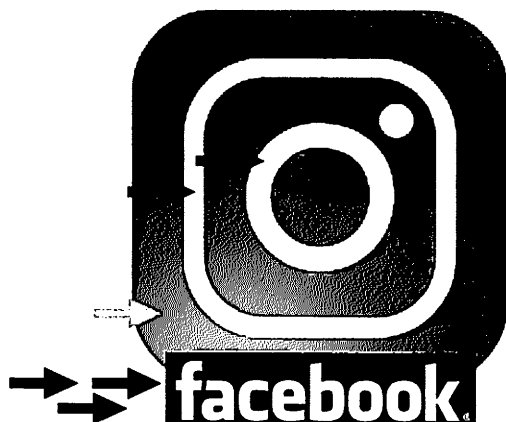
40. FACEBOOK and INSTAGRAM, using videos (VIDEO EXHIBIT ONE and VIDEO EXHIBIT TWO) published on their Internet social media platforms also depicting “information relating to music” (Plaintiff’s registered services), have saturated the market with their purported “new brand” which saliently highlight the “new product design” of the logo (compare *vis-a-vis* Plaintiff’s rights in connection with services of “product research and design”) as well as highlight a star-like gold radiant color-gradient; ellipses; and the particular color palette of blue, red, and gold which infringe Plaintiff’s rights.

41. Additionally, FACEBOOK is trademark-associated with text “in blue” (See website “facebook.com”; Reg. No. 4,643,774; EXHIBIT TEN), so the combination of FACEBOOK (text in blue) AND INSTAGRAM (as star-like color gradient of gold, red, blue; two rounded ellipse-like shapes and two circle /ellipses) causes the same to infringe Plaintiff JEREMY C. SOUTHGATE’s claim completely (arrows are added below to indicate comparison of the elements).

“The color(s) red, blue and gold is/are claimed as a feature of the mark. The mark consists of a gold encircled eight-point star, two red ellipses, and ‘Sound Spark Studios’ in blue.” U. S. Trademark Reg. Nos. 4,606,004; 4,711,931:

FACEBOOK AND INSTAGRAM

SOUND SPARK STUDIOS



© ®

42. Because of the commercial reach of FACEBOOK and INSTAGRAM as well as the prevalence of a majority of commercial enterprises to display the logos of FACEBOOK and INSTAGRAM on their webpages as links to social media webpages (*e. g.* EXHIBIT ELEVEN), exposure to the logos presented by FACEBOOK AND INSTAGRAM becomes a fact of daily life for the general public. FACEBOOK reports that it has “1.28 billion daily active users on average for March 2017” and “1.94 billion monthly active users as of March 31, 2017”<sup>3</sup>. INSTAGRAM reports that it has “a community of more than 600 million [users]”.<sup>4</sup>

43. From the moment FACEBOOK and INSTAGRAM announced their purported “new brand” on May 11, 2016, Plaintiff JEREMY C. SOUTHGATE has been instantly, irreparably harmed by the likelihood and reality of substantial loss to his “product identity, corporate identity, control over its goodwill and reputation, and ability to move into new markets.” *Supra.*

#### **NOTICE TO FACEBOOK**

44. Pursuant to 15 U. S. C. § 1111 and a good-faith desire to resolve Plaintiff’s claims, on September 26, 2016, Plaintiff JEREMY C. SOUTHGATE sent a letter, via U. S. Certified Mail, to Defendant FACEBOOK (EXHIBIT TWELVE). The letter was delivered to an agent of FACEBOOK on October 3, 2016 (EXHIBIT *Id.*). FACEBOOK did not respond or acknowledge.

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<sup>3</sup> <https://newsroom.fb.com/company-info/>

<sup>4</sup> <https://www.instagram.com/about/us/>

45. As of the May 9 registration of the first of the many INSTAGRAM mark applications at the United States Patent and Trademark Office, FACEBOOK AND INSTAGRAM have had actual notice of Plaintiff JEREMY C. SOUTHGATE's senior rights, but they continue to violate the same for profit.

### **MONOPOLIZATION AND RESTRAINT OF COMMERCE**

46.

**15 U. S. C. § 1** — Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal. Every person who shall make any contract or engage in any combination or conspiracy hereby declared to be illegal shall be deemed guilty of a felony, and, on conviction thereof, shall be punished by fine not exceeding \$100,000,000 if a corporation, or, if any other person, \$1,000,000, or by imprisonment not exceeding 10 years, or by both said punishments, in the discretion of the court.

47.

**15 U. S. C. § 2** — Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a felony, and, on conviction thereof, shall be punished by fine not exceeding \$100,000,000 if a corporation, or, if any other person, \$1,000,000, or by imprisonment not exceeding 10 years, or by both said punishments, in the discretion of the court.

#### **A. Facebook's Market Share**

48. FACEBOOK is a "social networking" organization, founded in 2004, where users can create a profile page for a person, business, or brand and where users can easily find or browse the profile pages of others.

49. In May 2017, FACEBOOK has a market capitalization of approximately \$428,495,751,579.<sup>5</sup>

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<sup>5</sup> <http://www.nasdaq.com/symbol/fb>

50. FACEBOOK reports that it has “1.28 billion daily active users on average for March 2017” and “1.94 billion monthly active users as of March 31, 2017”.

51. According to the Pew Research Center, “79% of online adults (68% of all Americans) use Facebook” as of April 2016.<sup>6</sup>

52. FACEBOOK acquired INSTAGRAM (and its 600 Million users) for approximately \$1 Billion in 2012.<sup>7 8</sup> (*See also other acquisitions: EXHIBIT THIRTEEN*)

53. According to the Pew Research Center, “32% of online adults (28% of all Americans) use Instagram” as of April 2016.<sup>9</sup>

54. FACEBOOK and INSTAGRAM together constitute a “combination” and have “contracts” in interstate commerce in the meaning of 15 U. S. C. § 1 *et seq.*

55. For the foregoing reasons, FACEBOOK and INSTAGRAM have significant monopoly marketshare (<68% of American adults) on the Public’s

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<sup>6</sup> [http://www.pewinternet.org/2016/11/11/social-media-update-2016/pi\\_2016-11-11\\_social-media-update\\_0-02/](http://www.pewinternet.org/2016/11/11/social-media-update-2016/pi_2016-11-11_social-media-update_0-02/)

<sup>7</sup> <https://newsroom.fb.com/news/2012/04/facebook-to-acquire-instagram/>

<sup>8</sup> <https://techcrunch.com/2012/04/09/facebook-to-acquire-instagram-for-1-billion/>

“Last year [2011], documents for a standalone Facebook mobile photo sharing app were attained by TechCrunch. Now it seems Facebook would rather buy Instagram which comes with a built-in community of photographers and photo lovers, while simultaneously *squashing a threat to its dominance in photo sharing.*” Emphasis added.

<sup>9</sup> [http://www.pewinternet.org/2016/11/11/social-media-update-2016/pi\\_2016-11-11\\_social-media-update\\_0-03/](http://www.pewinternet.org/2016/11/11/social-media-update-2016/pi_2016-11-11_social-media-update_0-03/)

time and attention, which is particularly valuable for branding, and thus why FACEBOOK sells (and monopolizes) access to people's time-limited attention via advertising.

56. FACEBOOK and INSTAGRAM also have significant monopoly marketshare of users *v.* other social networking websites (EXHIBIT FOURTEEN).

**B. Facebook's Commercial Restraint against the Plaintiff**

57. Like many businesses and brands do, Plaintiff JEREMY C. SOUTHGATE has maintained a page for SOUND SPARK STUDIOS on FACEBOOK since *circa* 2012 ("facebook.com/soundsparkstudios").

58. FACEBOOK and INSTAGRAM have created undue barriers to Plaintiff JEREMY C. SOUTHGATE's entry into a free and fair field of commerce.

59. FACEBOOK and INSTAGRAM advertise services for enterprising individuals like Plaintiff JEREMY C. SOUTHGATE; the advertisements say:<sup>10 11</sup>

"Create Awareness. Help people discover your business."

"Brand awareness ads help you tell people about your business, product or campaign."

"Our eye-catching storytelling formats help you capture attention and tell your story across every device. And we help you reach the people most likely to be interested in your business by connecting you with people similar to your current customers. Start sharing your story with the right people."

"Put your brand in motion. As people watch more video online, video ads are a compelling way to tell a story about your business, brand or products."

"Create an Ad."


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<sup>10</sup> <https://www.facebook.com/business/goals/build-awareness/>

<sup>11</sup> [https://www.facebook.com/business/goals/build-awareness/#brand\\_awareness](https://www.facebook.com/business/goals/build-awareness/#brand_awareness)

60. Plaintiff JEREMY C. SOUTHGATE spent \$150 of personal funds and \$100 of promotional credit for FACEBOOK Advertisements between September 2012 and October 2014.

61. FACEBOOK also proffers “page verification”:<sup>12</sup>

If you see a blue badge  on a Page or profile, it means that Facebook confirmed that this is the authentic Page or profile for this public figure, media company or brand. Keep in mind that not all public figures, celebrities and brands on Facebook have blue badges.

If you see a gray badge  on a Page, it means that Facebook confirmed that this is an authentic Page for this business or organization.

62. FACEBOOK’s “page verification” is two-tiered: The blue badge denotes higher credibility and “authenticity” than the gray badge, but which badge is given a page is at FACEBOOK’s controlling discretion.

63. Plaintiff JEREMY C. SOUTHGATE applied for page-verification of SOUND SPARK STUDIOS’ page (facebook.com/soundsparkstudios) and was given a gray badge on May 23, 2016 (U. S. Service Mark Certificate No. 4,711,931 was noticed by FACEBOOK as verification of SOUND SPARK STUDIOS’ brand/identity authenticity). The “gray badge” indicates that *FACEBOOK does not necessarily verify Plaintiff’s “brand” as authentic.*

(See *supra*, ¶ 61.)

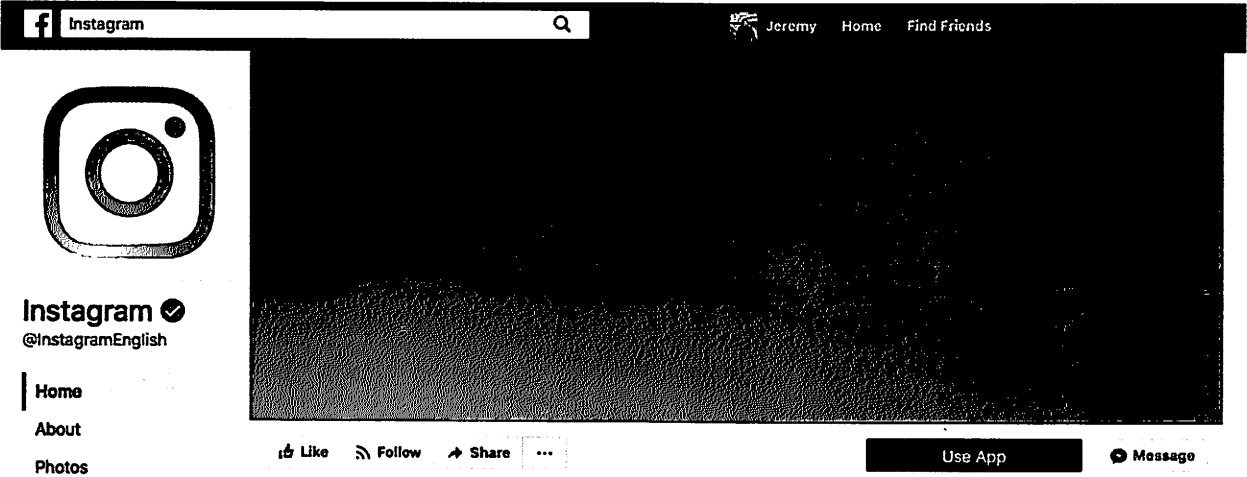
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[https://www.facebook.com/help/196050490547892?helpref=faq\\_content](https://www.facebook.com/help/196050490547892?helpref=faq_content)





64. But now, in violation of Plaintiff JEREMY C. SOUTHGATE's Rights — *FACEBOOK and INSTAGRAM verify themselves as an more 'authentic' more 'verified' brand* with a blue badge and usurp the artistically expressive brand for which Plaintiff had paid consideration within and without FACEBOOK to promote (*to wit: as Plaintiff's own property*).



Jeremy C Southgate

likes L.L.Bean.

Trump - nypost.com See More

- News Feed
- Messenger

SHORTCUTS

Sound Spark Studios

EXPLORE

- Events
- Pages
- Groups
- Jobs
- Friend Lists
- Pokes
- See More...

CREATE

- Ad
- Page
- Group
- Event
- Fundraiser



L.L.Bean

Sponsored

Like Page

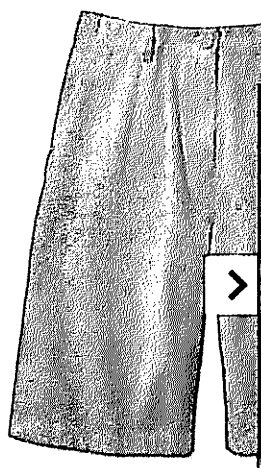
For a limited time, save 20% on everything you need for summer adventures – from shorts and tees to SUPs.



Original Sunwashed Shorts, Canvas

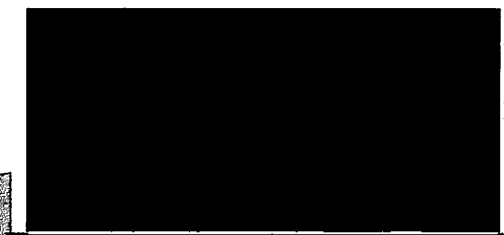
Use Promo Code: SUMMER. Ends ...

Shop Now



Wrinkle-Free Bayside Shorts, Original Fit Hidden Comfort

Use Promo Code: SUMMER. En



Connect With Facebook

- Internet.org by Facebook 9,328,242 likes
- Instagram 44,507,528 likes
- Facebook 187,941,536 likes
- Facebook Engineering 11,371,607 likes
- Mark Zuckerberg 90,993,553 followers

65. The jettisoning of the INSTAGRAM legacy logo and the jarring, total re-brand of INSTAGRAM in 2016 is a wanton, undue restraint on Plaintiff JEREMY C. SOUTHGATE's ability to continue a competitive enterprise in commerce because the brand-change, by combination of FACEBOOK AND INSTAGRAM, is effectively a forced acquisition of Plaintiff JEREMY C. SOUTHGATE's intellectual property without any compensation, and the brand-change prejudices 1.28 daily active users and 1.94 monthly active users against the Plaintiff JEREMY C. SOUTHGATE's valid and *senior* claim.

66. Here are some remarks by Mark Zuckerberg, CEO of Facebook, respecting "acquisitions" (directly quoted from a January 2017 interview<sup>13</sup>):

[1] If this [or any] [acquisition] is going to happen, it's not going to be because we offer a lot of money, although we're going to have to offer a fair price for the company that is more than what they felt like they could do on their own. But they also need to feel like this was actually going to help their mission, right?

[2] ... I think if you are trying to help convince people that they want to join you, helping them understand all the pain that they would have to go through to build it out independently is a valuable tactic....

[3] And often, if a [competing] company knows we're offering something, they will offer more.... So being able to move quickly not only increases our chance of being able to get a deal done if we want to, but it makes it so we don't have end up having to pay a lot more because the process drags out.

67. Mark Zuckerberg, Chief Executive Officer of FACEBOOK, of which INSTAGRAM is a subsidiary, knows that *a fair, free market acquisition* requires "a fair price for the company that is more than what they [the-acquired] felt like they could do on their own." ...

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<sup>13</sup> <http://www.businessinsider.com/mark-zuckerberg-explains-facebooks-acquisition-strategy-2017-1>

FACEBOOK C.E.O. Zuckerberg's knowledge is imputed to FACEBOOK and FACEBOOK's INSTAGRAM.

68. FACEBOOK AND INSTAGRAM have not offered or compensated Plaintiff JEREMY C. SOUTHGATE "a fair price for the [intellectual property] that is more than what [Plaintiff] could do on [his] own." Rather, Plaintiff JEREMY C. SOUTHGATE has taken the "pain ... to go through to build [his intellectual property] out independently" — Plaintiff has obtained Federal Registrations on his own which have priority over FACEBOOK and INSTAGRAM — only to have FACEBOOK AND INSTAGRAM "move quickly," with virtually unlimited reach and resources, as a monopoly, to infringe Plaintiff's intellectual property, thus depriving the Plaintiff of his corporate identity, control over its goodwill and reputation, and ability to move into new markets. (*See "reverse confusion," supra.*)

## **CLAIMS FOR RELIEF**

### **Count I Federal Copyright Infringement 17 U. S. C. § 101 *et seq.***

69. Plaintiff re-alleges each of the foregoing paragraphs.

70. Plaintiff owns valid Federal Copyright Registrations (§§ 10, 11).

71. While copyright does not protect simplistic shapes, colors, or short phrases *each per se*, Plaintiff's valid copyright in the "SOUND SPARK STUDIOS" 2-D Artwork subsists, *inter alia*, in the creative expression of an original logo and brand identity *versus* a look-alike derivative (copy).

72. While copyright does not protect the idea of "a picture of a sunset,"

Plaintiff's valid copyright in the "SOUND SPARK STUDIOS SKY" Photograph subsists, *inter alia*, in Plaintiff's conscious choice to fix a specific, remarkable sunset in an original photograph with an intent to use said photograph as a backdrop to "SOUND SPARK STUDIOS" 2-D Artwork, thus forming a derivative work and enhanced brand identity. This is *versus* one who copies Plaintiff's Photograph *and purpose for that photograph*: a background for a distinctive brand identity in the arts.

73. Defendants had a reasonable opportunity to access the works protected by the Federal Copyright Registrations, *inter alia*, when

- (a) Plaintiff cited the "SOUND SPARK STUDIOS" 2-D Artwork (U. S. Trademark Reg. No. 4,606,004, ¶ 7) to an agent of FACEBOOK dealing with legal matters via a trademark report form on October 28, 2014 (¶ \_\_);
- (b) Plaintiff's "SOUND SPARK STUDIOS" 2-D Artwork has been published on "facebook.com/soundsparkstudios" since as early as May 2012;
- (c) Plaintiff's "SOUND SPARK STUDIOS SKY" Photograph has been published on "facebook.com/soundsparkstudios" since November 16, 2015;
- (d) 191 visits from FACEBOOK internet protocol addresses have been logged on the most recent "soundsparkstudios.com" servers, which displayed the "SOUND SPARK STUDIOS" 2-D Artwork since 2011, and have been logging ip addresses since *circa* May 2014.

74. The unauthorized, manifest copying and appropriation (¶¶ 28, 30, 41, 64) of Plaintiff's brand-identity is unfair and improper.

75. On information and belief: the appropriation is knowing and willful.

76. Defendants FACEBOOK and INSTAGRAM violate Plaintiffs rights pursuant to 17 U. S. C. § 106; are liable pursuant to 17 U. S. C. § 501; and, their liabilities are remediable pursuant to 17 U. S. C. §§ 502 - 506.

77. Defendants FACEBOOK and INSTAGRAM are also liable for copyright infringement under common law.

**Count II**  
**Federal Trademark Infringement and Unfair Competition**  
**15 U. S. C. §§ 1051 *et seq.***

78. Plaintiff re-alleges each of the foregoing paragraphs.

79. Plaintiff owns valid Federal Trademark and Service Mark Registrations (¶¶ 7, 8, 9).

80. Defendants FACEBOOK and INSTAGRAM violate 15 U. S. C. § 1114(1)(a & b) by using in commerce a copy and colorable imitation (¶¶ 28, 30, 41, 64) of Plaintiff's Federal Registrations Nos. 4,606,004; and 4,711,931.

81. Defendants FACEBOOK and INSTAGRAM violate 15 U. S. C. § 1125(a)(1)(A & B) by using in commerce a device (¶¶ 28, 30, 41, 64) so similar to the totality of Plaintiff's Federal Registrations Nos. 4,606,004; 4,711,931; and 5,047,726, and common-law trademarks in relation thereto, and collection of intellectual property generally, that there is likely to be confusion, mistake, and/or deception as the origin, nature, and approval of services and goods (including Plaintiff's copyrights as material "goods"), and Plaintiff believes he is damaged thereby.

82. Defendants FACEBOOK and INSTAGRAM are liable pursuant to 15 U. S. C. §§ 1114(1) and 1125(a); their liabilities are remediable pursuant to 15 U. S. C. §§ 1114, 1116 - 1119.

83. Defendants FACEBOOK and INSTAGRAM are also liable for trademark infringement under common law.

84. On information and belief: the infringement and appropriation is knowing and willful.

**Count III**  
**Monopolization and Restraint of Commerce**  
**15 U. S. C. § 1 *et seq.***

85. Plaintiff re-alleges each of the foregoing paragraphs.

86. FACEBOOK, INC. and INSTAGRAM, LLC together form a “combination” in interstate commerce (¶¶ 6, 41). 15 U. S. C. § 1.

87. FACEBOOK, INC. and INSTAGRAM, LLC, as a combination, maintain a monopoly market share (¶¶ 48 - 56) as a “social” Internet service. 15 U. S. C. § 2.

88. FACEBOOK, INC. and INSTAGRAM, LLC, in violation of Plaintiff’s intellectual property rights (¶¶ 7, 8, 9), have together conspired to re-brand INSTAGRAM (¶¶ 28, 30, 41, 64), which unduly restrains the Plaintiff from maintaining a distinctive presence in interstate commerce.

89. On information and belief: the restraint of Plaintiff’s distinct presence in interstate commerce is a knowing and willful attempt to monopolize a part of commerce in which Plaintiff does business, namely, the Internet.

90. *Even if* the restraint were innocent, by rule of reason, it would be a violation of the declaration and mandate of 15 U. S. C. § 1 *et seq.* to allow FACEBOOK'S INSTAGRAM to completely and totally change its brand in violation of plaintiff's rights, when the former INSTAGRAM legacy logo was well-liked and useful for FACEBOOK and, moreover, the legacy logo did not infringe on or restrain Plaintiff's rights while offering substantially the same services.

91. For the foregoing reasons, FACEBOOK, INC. and INSTAGRAM, LLC are in violation of 15 U. S. C. §§ 1 and 2, and they are liable to the Plaintiff pursuant to 15 U. S. C. § 15. Their liabilities are remediable pursuant to 15 U. S. C. §§ 4 and 15.

#### **PRAYER FOR RELIEF**

WHEREFORE, I, the Plaintiff JEREMY C. SOUTHGATE doing business as SOUND SPARK STUDIOS, respectfully request an Order and Judgment from this Court to effect the following:

- (a)** Pursuant to 28 U. S. § 2201: a declaration that Defendants FACEBOOK, INC. and INSTAGRAM, LLC are in restraint of Commerce and infringing the intellectual property rights of the Plaintiff;
- (b)** Pursuant to 15 U. S. C. §§ 4, 1116(a) and 17 U. S. C. § 502: a permanent injunction against Defendants FACEBOOK, INC. and INSTAGRAM, LLC, and their directors, officers, employees, agents, affiliates, successors, assigns, franchises, licensees, and all those in privity or acting in concert with them, (1) commanding them to revert to the old "INSTAGRAM



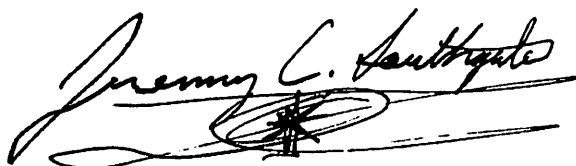
Legacy” brand and (2) restraining them from further direct, contributory, and vicarious copying; infringing; likelihood of confusion, mistake or deception-causing; or diluting violation(s) of Plaintiff’s trademark, service mark, and copyright intellectual property rights;

- (c) Pursuant to 15 U. S. C. §§ 4, 1116 and 17 U. S. C. § 503: verified impoundment and destruction of all infringing articles;
- (d) Pursuant to 15 U. S. C. §§ 4, 1119: the cancellation of all registrations and applications by INSTAGRAM, LLC, whose serial numbers are set forth under ¶ 30 of this Complaint;
- (e) Pursuant to 15 U. S. C. §§ 4, 15, 1117 and 17 U. S. C. § 504: actual or statutory damages, whichever is greater, or Constructive Trust of all infringement profits and all traceable products thereof; and punitive damages;
- (f) Such other and further relief as this Court deems just and proper to restrain FACEBOOK and INSTAGRAM’s anticompetitive conduct and make whole the Plaintiff. *See, inter alia:* 15 U. S. C. § 4.

**DEMAND FOR JURY TRIAL**

I, JEREMY C. SOUTHGATE, demand a trial by jury for all issues so triable.

Respectfully submitted,

A handwritten signature in black ink, reading "Jeremy C. Southgate". The signature is written in a cursive style with a large, stylized initial "J" and "S". There is a small mark or scribble at the end of the signature.

**Jeremy C. Southgate** d/b/a  
**Sound Spark Studios**  
*PRO SE*  
24 Maynard Farm Circle  
Sudbury, MA 01776  
jeremy@soundsparkstudios.com  
617-584-5219

DATED:  
June 5, 2017

**LOCAL RULE 83.1(M) CERTIFICATION**

I, JEREMY C. SOUTHGATE, declare under penalty of perjury that this document is my own work-product. No attorney has prepared or has assisted in preparing this document. I have been reading law since 2011.  
Executed on June 5, 2017.

/s/ Jeremy C. Southgate  
Jeremy C. Southgate  
*PRO SE*

**ADDENDUM**

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