

# What's In A Username?

## *Protecting Your Trademark on Facebook and Twitter*

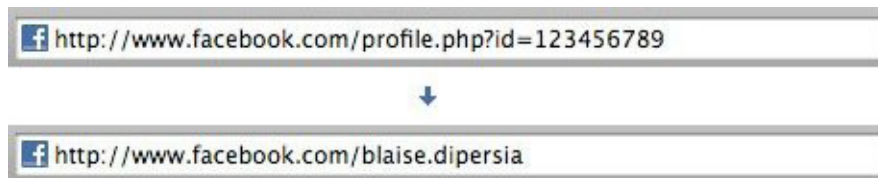


By **Ryan Lobato**

Chances are if you don't have a user account with Twitter® or Facebook® yet, you've at least considered getting one. Facebook® currently has over 200 million active users, with over 100 million of those logging on at least once a day. Although Twitter® has only 10% the number of users, it is quickly becoming a similar Internet phenomenon. The size and scope of individuals reached through these two online social networking sites are difficult to overestimate.

Despite the many advantages of social sites such as Facebook® and Twitter®, the widespread use of these sites can cause many problems for trademark owners. If you are a trademark owner, you may want to consider taking steps to prevent the unauthorized use of your mark(s), particularly in light of recent developments.

On June 9, Facebook® announced that as of 12:01am Eastern Daylight Time **this Saturday**, June 13, 2009 (11:01pm Friday, June 12th, Central Daylight Time), current members will be allowed to personalize their URLs by adding a custom usernames. As a result, at the user's request the otherwise indecipherable web extensions associated with user accounts may become more intelligible. The following is the illustrative example provided by Facebook®:



A rising concern, however, is the fact that with equal ease a user might request the URL **http://www.facebook.com/YOUR.TRADEMARK**. The only requirements of Facebook® are that the requested username be longer than five characters and alphanumeric.

The improper use of trademarks on the Internet has been a problem in other situations for years. In some cases, a trademark owned by another party may be used by a fan or individual with some peripheral connection to the mark. Sometimes, however, the reason is less innocuous. When a trademark owned by another party is used to make a profit, it may amount to a practice known as "cybersquatting." Cybersquatting can prevent the owner from using the trademark, can diminish the brand equity of the trademark, and can allow the cybersquatter to unfairly reap the benefits of the goodwill associated with the mark. Use of another's trademark may also amount to trademark infringement and unfair competition.

CONTINUED ON NEXT PAGE

CONTINUED FROM PREVIOUS PAGE

Thankfully, Facebook® has also established various means by which rights holders can protect their trademarks from unauthorized use. Specifically, Facebook® has taken the following four steps:

- First, rights holders may protect their trademarks by filing their trademark(s) online with Facebook®. (Facebook® trademark registration form available at [http://www.facebook.com/help/contact.php?show\\_form=username\\_rights](http://www.facebook.com/help/contact.php?show_form=username_rights), *last accessed June 11, 2009*.) This filing will prevent any third-party users from acquiring the filed trademark as a username. Filing requires the name of the company, the trademark to protect, the federal registration number of the mark, and the filer's title and e-mail address. Each mark must be filed separately.
- Second, in an effort to prevent a rush of new cybersquatting users reserving trademarks without permission, Facebook® is currently limiting the ability of new users to acquire customized username URLs. This limitation will expire on June 28, 2009, however, so any preventative filings with Facebook® must be done before that date.
- Third, Facebook® is not authorizing any transfer of usernames in the hope that this will eliminate squatting or profit-driven username transfers.
- Fourth, Facebook® maintains an online IP Infringement form (available at [http://www.facebook.com/help/search.php?hq=username&ref=hq#/copyright.php?noncopyright\\_notice=1](http://www.facebook.com/help/search.php?hq=username&ref=hq#/copyright.php?noncopyright_notice=1), *last accessed June 11, 2009*) which allows rights holders to protest after-the-fact unauthorized uses of their intellectual property.

The intellectual property policing policies at the micro-blogging site Twitter® are somewhat different, and in some cases less friendly to rights holders than those of Facebook®. Like the new Facebook® usernames, just about any username may be created at Twitter® by just about anyone. In the past, Twitter® impersonators have claimed usernames ranging from corporate entities like Coca-Cola Co. to celebrity identities like Christopher Walken. Unlike Facebook®, Twitter® utilizes a general feedback form (available at <http://twitter.zendesk.com/requests/new>, *last accessed June 11, 2009*) for filing complaints and not a specific form for intellectual property complaints. Alternately, an update, i.e., "tweet", reply to @spam specifying that "the @squatter account is a cybersquatter" will also result in a complaint being generated. Also, the policy at Twitter® specifies that any name squatters who attempt to sell or otherwise obtain payment for a transfer of usernames will, upon being reported, have their accounts permanently suspended. At present, suspended usernames are not being released and therefore cannot be reacquired by the rights holder.

Notably, Twitter® utilizes a standard of a "clear intent to mislead people" as a basis for suspending unauthorized accounts. However, Twitter® explicitly allows parody impersonation accounts to exist. The standard Twitter® uses for defining parody is, "Would a reasonable person be aware that it's a joke?" If so, the account is permitted. Additionally, non-tweeting or "inactive" accounts do not, under Twitter®'s present policy, present a "clear intent to mislead people." Although Twitter® states that after six months an inactive account may be suspended, at the present time Twitter® is not cancelling or otherwise releasing inactive accounts. As a result, an inactive account tweet-squatting on your name may effectively prevent you from acquiring the account.

CONTINUED ON NEXT PAGE

CONTINUED FROM PREVIOUS PAGE

## **IN BRIEF: How can you protect yourself?**

1. Have your registered trademarks recorded with Facebook®, ideally by June 28, 2009.
2. Have your trademarks and corporate name registered with Twitter® to prevent others from using it.
3. Be vigilant. No one knows the next new Internet craze, and significant damage to your reputation and goodwill can occur in short order. By being aware of these issues you can spot trouble early and take steps to avoid messy legal situations down the road.

If you would prefer to have us to register your trademarks with Facebook® or Twitter®, or if you have any further questions, please do not hesitate to contact any member of the [McAfee & Taft Intellectual Property Group](#).

*Ryan Lobato is an **intellectual property** attorney with **McAfee & Taft**.*