

ADVISORY

SULLIVAN & WORCESTER LLP INTELLECTUAL PROPERTY ADVISORY

Facebook Username Functionality Creates Risk of Trademark Infringement

The popular social networking Web site Facebook recently announced that it will begin to allow its users to select the usernames of their choice to be displayed in URLs that link directly to a user's profile (i.e. <http://www.facebook.com/username>). These usernames will be awarded on a first-come, first-served basis beginning this Saturday, June 13, 2009. There are no restrictions of the usernames that individuals may choose. This activity may give rise to unscrupulous users selecting usernames that correspond to a company's name or its trademarks, later attempting to sell these usernames back to the legitimate brand owners.

Facebook has created a process in an attempt to prevent this unlawful activity, but it requires immediate action on the part of businesses seeking to protect their registered trademarks from this "username squatting." Trademark owners may apply to have their registered trademarks reserved from the pool of available usernames by completing a simple online form at http://www.facebook.com/help/contact.php?show_form=username_rights (the "Prevention Form"). This reservation process will continue past the offering of usernames on Saturday, but businesses should complete the Prevention Form as soon as possible, as it is expected that many usernames will be selected as soon as they are made available by Facebook.

We note that the Prevention Form currently appears to be available only for U.S. registered trademarks. Facebook will not accept a Prevention Form where the registration number field is left blank. If you have unregistered or foreign registered trademarks, you may still seek protection from registered, unauthorized Facebook usernames by completing a separate "Notice of Intellectual Property Infringement" ("Infringement Notice") in which you may write out the basis for your claim of infringement without having to submit a trademark registration number. The Infringement Notice can be found at:

http://www.facebook.com/copyright.php?noncopyright_notice=1.

Facebook expressly has reserved the right to revoke usernames for any reason.

IF YOU WOULD LIKE ADDITIONAL INFORMATION, PLEASE CONTACT:

Kimberly B. Herman
617 338 2943
kherman@sandw.com

Mitchell C. Stein
212 660 3042
mstein@sandw.com

Christopher T. Stevenson
617 338 2428
cstevenson@sandw.com

BOSTON

Sullivan & Worcester LLP
One Post Office Square
Boston, MA 02109

NEW YORK

Sullivan & Worcester LLP
1290 Avenue of the Americas
New York, NY 10104

WASHINGTON, DC

Sullivan & Worcester LLP
1666 K Street, NW
Washington, DC 20006

IN ISRAEL

ZAG/S&W LLP
41-45 Rothschild Blvd., Beit Zion
Tel Aviv, 65784 Israel

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What should you do?

Businesses should make every possible effort to reserve their registered trademarks before usernames are made available to the general public. It is important to note that the Facebook system will make usernames available at midnight EDT on Saturday, June 13, 2009. This means that the usernames may begin becoming available well before midnight in your particular time zone.

To reserve your registered trademark, complete the Prevention Form at http://www.facebook.com/help/contact.php?show_form=username_rights. You will need to complete the form for each trademark you wish to reserve and the form will require your trademark registration number. If you have trademarks that are not U.S. federally registered and become aware of any Facebook username that infringes those marks, you should submit an Infringement Notice as soon as possible. If you have any questions or need assistance with the issues raised by this advisory, please contact any of the attorneys listed.