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Are you one of the many companies today exploring ways to tap the potential of popular social networking web sites such as Facebook and LinkedIn for business development and marketing purposes? If so, you should be aware a new feature offered by Facebook that has serious implications for your company's intellectual property rights.

Facebook's New User Name Feature

In recent years, social networking services have quickly become a popular way for people to connect, communicate, and share information via the Internet. With millions of people accessing such services on a daily basis, companies now realize the significant business opportunities that may be captured through the social networking realm. At the same time, social networks present certain intellectual property issues that must be managed properly to protect your company's interests. Facebook's new "user name" feature highlights the risk posed to trademark owners through the use of trademarks and business names in Facebook user names.

On June 13, 2009, Facebook began allowing its users to personalize their Facebook URL through selection of a user name. For instance, the popular band U2 has reserved "U2" as its user name, thereby creating the following URL for its Facebook page: www.facebook.com/U2. Obtaining a user name and unique Facebook URL makes it easy for your company to promote its presence on Facebook (www.facebook.com/companyname). The Facebook URL can then be incorporated into your company's marketing communications, web sites, letterhead, and business cards to maximize exposure of your company's Internet presence, thus increasing the marketing value derived from these networking sites.

What This Means For You

Registering your company's user name and unique URL on Facebook, however, may be challenging. In fact, a Facebook user may have already registered a user name and Facebook URL in bad faith, incorporating the business name or trademark of your company, with the intent of profiting from the goodwill belonging to you. Potentially, this person may have secured the unique URL and user name from Facebook to obtain payment from you to turn over rights and access to this Facebook URL.

Cybersquatting, as this practice is known, is not a new issue – it also arose in the context of registration of domain names when the Internet gained widespread popularity in the 1990s. At that time, certain dishonest entities would reserve domain names consisting of the trademarks or name of a successful

company for the purpose of selling the right to that domain name to the interested company for an inflated price. A significant body of case law quickly followed, holding that such activities constitute dilution and uncompetitive conduct under Federal trademark laws. As a result, special legislation addressing domain name cybersquatting was passed in 1999, which made these activities largely obsolete. While cybersquatting on Facebook with user names and URLs is similar to the problems experienced a decade earlier with domain name registrations, the federal Anti-cybersquatting Consumer Protection Act of 1999 relates only to domain name registrations, and not user names on Facebook.

Recognizing this inherent problem in its new “user name” feature, Facebook has proactively set forth several policies and procedures to help trademark owners protect their intellectual property. Facebook has limited eligibility for registration of user names and unique URLs to current, active users through June 28, 2009. During this grace period, users will not be able to create a new Facebook account for the purpose of improperly registering user names for exploitation. Additionally, Facebook is encouraging trademark owners and rightsholders to contact them to request that certain names be blocked from registration. Facebook does not allow users to change or transfer user names, hoping to avoid user name scalping. Finally, Facebook has a procedure in place for reporting intellectual property infringement on Facebook. If infringement is found, Facebook may prohibit or eliminate use of the problematic user names and URLs.

Together these policies and procedures assist rightsholders in monitoring and enforcing their intellectual property rights. We strongly recommend that if your company has a Facebook presence, it should register an appropriate user name promptly. For assistance with the user name feature of Facebook or to report infringement, please visit Facebook’s help section for this feature (<http://www.facebook.com/help.php?topic=username>).

Not If, But How

Arnall Golden Gregory LLP has significant experience in the area of intellectual property, including trademark disputes arising out of the Internet. Do not hesitate to contact us if we can be of assistance to you.

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