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Did Facebook look before it leaped with its Usernames program?

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Hughes Hubbard & Reed LLP • A New York Limited Liability Partnership
One Battery Park Plaza • New York, New York 10004-1482 • +1 (212) 837-6000

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Since Facebook launched its Facebook Usernames initiative in mid-June, over 6 million unique individuals have registered usernames for their personal profiles, and over 15,000 usernames have been registered for Facebook Pages as well, which are commonly used by businesses and other organizations. In many ways, the program looks like a proprietary domain name registration system. However, when we read that Facebook is claiming ownership over every username, an assertion attributed to a company spokesman, we realized that Facebook is not acting like a domain name registrar. We also wondered about the legal basis of such a claim. The program enables individuals and companies to register a Facebook URL with an address format of [www.facebook.com/\[username\]](http://www.facebook.com/[username]). Applicant for usernames are generally allowed to choose them freely, without need to prove any connection or ownership to the name itself. This wide-open nature raises potential concerns for intellectual property rights holders, particularly trademark owners, worried about unauthorized use of their trademarks in connection with the service. Facebook has sought to maintain as much of control over the usernames as possible, including the right to remove or reclaim a username at any time for any reason. This strong proactive stance is probably partially motivated by a desire to preempt and prevent widespread buying or selling of usernames, and the cyber-squatting practices that follow. (Such concerns are not unfounded; Facebook usernames are already up for sale on Assetize, an online website specializing in the buying and selling of online accounts.) But back to the ownership issue—Can Facebook actually "own" a username that contains a registered and widely used trademark owned by someone else? And if Facebook "owns" the username, what happens when a trademark owner seeks to register the username containing its mark? Is "ownership" (i.e., title) to the username conveyed? Or does Facebook license the username? Take for example the username "facebook.com/burgerking". As of the date of this posting, Burger King has not yet registered the username, but if it does choose to register it, is it accurate to say that Facebook is transferring ownership over the username to Burger King? Or is it licensing it? Either way, how can Facebook transfer to Burger King something Burger King already owns? Also, Facebook claims that when a Facebook account is cancelled, that account's username will not become available to anyone else. If Burger King registers for the user name, and then cancels it, can Facebook prevent Burger King from re-registering the user name if it later changes its mind? In the end it is not clear or likely that Facebook can legitimately assert power over trademark holders when it comes to the use of their trademarks in the Usernames program. Facebook's terms of service do not help to clarify the matter. They make no mention of the Usernames

program. On the other hand, Facebook's "[Help Center](#)" does have a section devoted to answering common questions about the program. When the program was launched, the Help Center materials contained a few scant paragraphs of information. Since that time, it has become much more developed, but that initial lack of clarity exemplifies the legal ambiguity with which the initiative got off the ground. The uncertainties surrounding the Usernames program may be of particular concern for businesses in light of their increasing reliance on Facebook as an avenue through which to connect with customers (and concerns about businesses' dependence on Facebook are not new). We will eventually see if Facebook's experience with the Usernames program proves a cautionary tale as to the pitfalls of rolling out new programs without fully anticipating the potential legal issues. As the Username feature develops and more companies become aware of it, Facebook may see both disputes and angry markholders multiply. This may turn into yet another cyber-battleground over trademarks. Numerous trademark infringement claims have been brought against Google in connection with its search ad business. The claims are based on Google's sale of trademarked keywords through its AdWords program. In large part, the plaintiffs have asserted that such sales constitute trademark infringement because consumers could be confused by links to competitors' ads that pop up alongside a search for the plaintiff's marks. While Google suffered a litigation setback in April when the Second Circuit reversed a dismissal of a suit brought by Rescuecom Corp., two separate actions against Google, one by Daniel Jurin and the other by Ascentive LLC, were both recently dismissed. We will continue to monitor these matters and keep an eye out for developments. In the meantime, our group would be happy to discuss any specific questions you might have about the impact of Facebook's Usernames program on your trademark portfolio and help you develop strategies to protect your intellectual property rights. * We would like to thank Yoshinori Sasao, an associate at the Firm, who assisted in preparing this article.

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