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Beware: Twitter-Squatting and Its Successors

By [Stephanie Chandler](#) and [Emilio B. Nicolas](#)

It seems that every day the following statement rings true: "Technology moves faster than the law." Today's lesson: "Twitter-squatting" (or "squatting"). We have recently seen a surge in complaints about third parties registering client trademarks or names as Twitter monikers. Does the law protect against such appropriation? Not necessarily.

To prevent the impermissible use of your trademark or name, you would generally look to trademark law (e.g., trademark infringement, trademark dilution, false designation of origin) or, maybe, the laws which protect the rights of publicity or privacy (e.g., misappropriation of name and likeness). However, not every use is an unlawful trademark use – which may require a showing that your trademark has been used in connection with a particular good or service – or violation of the right of publicity or privacy – which may require a showing that your name or likeness has been used in a commercial sense. In other words, the law may not impose liability simply because a squatter has used your trademark or name without permission.

We have seen a similar dilemma before in the context of cybersquatting, which is the practice of registering a domain name that is identical or similar to another's trademark, and then attempting to sell or license the domain name to the trademark owner or a third party. In 1999, years after the advent of the Internet, Congress passed the [Anticybersquatting Consumer Protection Act](#), 15 U.S.C. § 1125(d), to statutorily prohibit cybersquatting because trademark owners were relying on traditional trademark law to protect their rights online, which, as previously explained, is not always applicable. But the statute's scope is apparently limited to a squatter's misuse of a domain name. No such law has been enacted with respect to Twitter or other social networking and weblog sites like MySpace, Facebook, and LinkedIn, and it appears that no significant legislation is on the near horizon. Again, we have found ourselves in the situation where technology and those seeking to advantage from it have moved forward faster than the law.

What can you do to protect your valuable trademarks and other names from Twitter-squatting and its successors? Your first move should be to keep ahead of the squatters by:

1. registering your trademarks with the U.S. Patent & Trademark Office and/or relevant state filing systems, as applicable; and
2. registering your trademarks and other names as domain names (keeping in mind the restrictions of the Anticybersquatting Consumer Protection Act) and with Twitter, Digg, and any other existing social networking and weblog sites.

If you are too late, and a squatter has registered your trademark or name as his moniker, then consider the following:

- Contact the squatter, either directly or through an intermediary, and negotiate the transfer of the disputed moniker.
- Review the rules and policies of the applicable social networking or weblog site to determine whether the squatter has violated such rules and policies. For example, under its stated policies, Twitter may suspend (but not necessarily transfer) any name squatting and "username for sale" accounts. See [Twitter, Name Squatting Policy](#); see also [Twitter, Trademark Policy](#).
- Have your legal representative send a cease-and-desist letter.
- Proceed with litigation based on traditional theories like trademark infringement, trademark dilution, and, in certain cases, defamation, business disparagement, and tortious interference.

Each of these actions has benefits and costs. For example, litigation may not always be the preferred route. Depending on the jurisdiction, it may be difficult to discover the squatter's true identity (be it a competitor or a judgment-proof individual) because stringent privacy laws and/or policies may prohibit the service provider from disclosing such information. Additionally, service providers may respond in different ways based on the relevant facts or the tone of the communications.

Of course the facts and circumstances of every case are different, so you are cautioned to consult with an attorney knowledgeable of these matters before taking any of the foregoing actions. Let Jackson Walker L.L.P. guide you successfully through these issues.

For more information about this topic, or should you have any questions, please contact:

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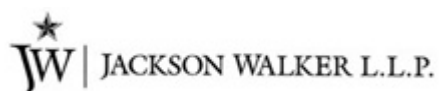
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