

MESCHKOW & GRESHAM, P.L.C.

PATENT, TRADEMARK AND COPYRIGHT LAW

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Dear Sir or Madam:

Our client is the proprietor of the website at <http://www.customerservicescoreboard.com>, a goods and services rating service. Our client, who also uses its domain with myriad variations with Path names (in this case the website at <http://www.customerservicescoreboard.com/Facebook>), has requested we write you concerning a threat of trademark infringement/dilution regarding the FACEBOOK name, from 'Ethel', attached.

We completely recognize myriad mark names at <http://www.customerservicescoreboard.com>, but that use is not trademark infringement or dilution. Rather, since our client uses <http://www.customerservicescoreboard.com/Facebook> for consumer ratings, it is a fair use of the mark, or a non-trademark use of a mark.

Fair Use of a mark stems from such cases as the famous one, *Ford Motor Company v. 2600 Enterprises*, 177 F.Supp.2d 661 (DIST, E.D. MI 2001). Referring to the Federal Trademark Dilution Act as FTDA, it holds:

Criticism of a product likewise warrants exemption from the anti-dilution law. *See, e.g., Northland Ins. Cos. v. Blaylock*, 115 F.Supp.2d 1108, 1122-23 (D.Minn.2000) (upholding defendant's use of "northlandinsurance.com" to criticize plaintiff Northland Insurance Companies as noncommercial speech).

177 F.Supp.2d 665

Here, our client does not wish to compliment or disparage the FACEBOOK brand name. Rather, at <http://www.customerservicescoreboard.com/Facebook> the user providing the rating concerning FACEBOOK may do so, instead.

This is a fair use of a mark, such as in *The New Kids on the Block v. News America Publishing, Inc.*, 971 F.2d 302 (9th Cir. 1992). Here, the court held "The 'fair-use' defense, in essence, forbids a trademark registrant to appropriate a descriptive term for his exclusive use and so prevent others from accurately describing a characteristic of their goods." *Soweco, Inc. v. Shell Oil Co.*, 617 F.2d 1178, 1185 (5th Cir.1980). Once again, the courts will hold as a matter of law that the original producer does not sponsor or endorse another product that uses his mark in a descriptive manner. See, e.g., *Schmid Laboratories v. Youngs Drug Products Corp.*, 482 F.Supp. 14 (D.N.J. 1979) ("ribbed" condoms)." 971 F.2d 306.

Anyone can use the term FACEBOOK for a service that allows users to rate its services. There is no way the proprietor of <http://www.customerservicescoreboard.com> is using the FACEBOOK mark to identify itself, thus there is no trademark infringement or dilution.

We therefore see 'Ethel's' email to be incorrect as well as wrongful. We hope this closes the matter in a favorable manner.

I also invite discourse, if you feel any fact herein is incorrect or disputable, kindly contact me. Otherwise, we await a specific withdrawal of the threat in see 'Ethel's' email. Please send such expeditiously.

Sincerely,

MESCHKOW & GRESHAM, P.L.C.



Jordan M. Meschkow

JMM/acm

Enclosure

From: [REDACTED]
Sent: Wednesday, November 03, 2010 3:33 PM
To: jm@patentmg.com
Subject: [Fwd: customerservicescoreboard.com - Notice of Facebook Trademark Infringement]

----- Original Message -----

Subject: customerservicescoreboard.com - Notice of Facebook Trademark Infringement

Date: Fri, 29 Oct 2010 02:00:03 UT

From: enforcement@facebook.com

To: domains@terabytemedia.com

We are writing concerning your registration and use of the domain name customerservicescoreboard.com, which contains the famous Facebook trademark.

As you undoubtedly know, Facebook is the leading online social network service. Facebook adopted the name and trademark Facebook in February 2004 and, since that time, Facebook has actively used the Facebook name and trademark in connection with its online social network service, including maintaining the web site www.Facebook.com. The term Facebook is one of the most famous trademarks on the Internet. Facebook owns exclusive trademark rights to the Facebook name in the United States and internationally, including related common law rights. Accordingly, Facebook enjoys broad trademark rights in its name.

Facebook has made a substantial investment in developing and providing its services. As a result of Facebook's pioneering efforts and devoting substantial effort and resources to providing only high quality services, the Facebook name and trademarks are widely known among the consuming public worldwide, and the name and trademarks embody substantial and valuable goodwill.

Accordingly, we were concerned when we learned of your registration and use of customerservicescoreboard.com. As we hope you can appreciate, protection of its trademarks is very important to Facebook. Your registration and use of customerservicescoreboard.com violates the Lanham Act (15 U.S.C. 1051 et seq.) because it infringes and dilutes the famous Facebook trademark.

Infringement occurs when a third party's use of a company's trademark (or a confusingly similar variation thereof) is likely to confuse consumers as to the affiliation, sponsorship or endorsement of the third party's services. Trademark dilution occurs when a third party's use of a variation of a company's trademark is likely to lessen the distinctiveness of the company's famous trademark.

We have filed several proceedings before the United Nation's World Intellectual Property Organization's arbitration panel. Facebook has prevailed in each case and the domain names at issue were all ordered to be transferred to Facebook. Facebook is concerned that your unauthorized use of the Facebook name may cause confusion as to whether you or your company's activities are authorized, endorsed or sponsored by Facebook when, in fact, they are not.

We understand that you may have registered customerservicescoreboard.com without full knowledge of the law in this area. However, Facebook is concerned about your use of the Facebook trademark in your domain name. As you may know, the Anticybersquatting Consumer Protection Act provides for serious penalties (up to \$100,000 per domain name) against

persons who, without authorization, use, sell, or offer for sale a domain name that infringes another's trademark.

While Facebook respects your right of expression and your desire to conduct business on the Internet, Facebook must enforce its own rights in order to protect its valuable and famous trademark. For these reasons, and to avoid consumer confusion, Facebook must insist that you immediately stop using customerservicescoreboard.com and disable any site available at that address. You should not sell, offer to sell, or transfer the domain name to a third party and should let the domain registration expire.

Please confirm in writing that you will agree to resolve this matter as requested. If we do not receive confirmation from you that you will comply with our request, we will have no choice but to pursue all available remedies against you.

Sincerely,

Ethel

Legal Dept.
Facebook, Inc.