

A Winthrop & Weinstine blog dedicated to bridging the gap between legal & marketing types.

First in Time on the Internet

November 11, 2011 by Dan Kelly

Yesterday, [Laura](#) provided [some good marketing reasons](#) for grabbing your company's brand name(s) and/or trademark(s) on various social media sites while the marks and brands are still available. I am not a marketing professional, but I agree with everything that she has said, and I'm here to provide some "legal" reasons for grabbing your company's brand or mark in these spaces.

I use quotes around the "legal" reasons because not all of my proffered reasons are strictly legal. From a strictly legal standpoint, a company that intends to rely on its trademark rights to preserve its own space on various social networking sites may have no protection whatsoever. Painting with broad strokes, conventional trademark law often cannot reach the use of a domain name in an Internet address because such use is often not considered trademark use. Uniform Domain Name Resolution Proceedings ([UDRP](#)) and Anticybersquatting Consumer Protection Act (ACPA) actions are generally directed at cybersquatting and typosquatting of domain names, not path extensions in particular domain name spaces. (And I hasten to add that I have not researched this point. I would be curious to know if anyone is aware of an ACPA action against use of a mark in a URL path, as opposed to a domain name. Trademark types might review the definition of "domain name" in the Lanham Act under [15 USC 1127](#) and consider its import. The ACPA is at [15 USC 1125\(d\)](#).) So much for "legal" remedies.

So if strictly legal rights and remedies often do not work for protecting a mark or brand in an Internet address path, what then? Well, the various websites themselves might provide some recourse. FaceBook's trademark help page is [here](#). Twitter's is [here](#). Though I have not reviewed these in detail, it is not uncommon that these remedies, much like UDRP and ACPA remedies, will only be beneficial against bad-faith uses. Good faith uses, such as another company with the same mark or name, or fair uses, like gripe sites, will often be outside of the reach of these remedies.

If those don't work, you're pretty much down to the basic wild west legal principle of "I was here first"--known generally in legal circles as the "first in time" principle.

There are two points worth making about the first in time principle as applied to Internet addresses.



The first is the hackneyed but true economic point that [an ounce of prevention is almost always cheaper than a pound of cure](#). Reserving marks, brands, and company names is often a low cost or cost-free exercise in social media spaces, but hiring a lawyer to advise on prying a valuable name away from a third party is almost certain to cost hundreds or thousands of dollars. So there's an economic reason.

But here's the second point about the first in time principle in Internet addresses: there is a new paradigm in town. Trademark law has long tolerated pluralism. My favorite example is DELTA: Delta Air Lines, Delta Faucet, and Delta Power Equipment can all happily coexist because airline services, faucets, and power tools are sufficiently different from each other that the use of identical marks for different sources is not confusing. But on the Internet, there is only one [delta.com](#), and it belongs to Delta Air Lines. There is only one [twitter.com/delta](#) (or @Delta), and it belongs to Delta Air Lines. There is only one [facebook.com/delta](#), and it belongs to Delta Air Lines. There is only one [youtube.com/delta](#), and it appears to belong to Delta Air Lines. Internet addressing does not tolerate pluralism. It is driving towards monism. So, on the Internet and social media sites, get your name first or get a different name.

