

Facebook v. Typosquatters: Damages and Domains Awarded Under Anticybersquatting Consumer Protection Act



Camille M. Miller

**Co-Chair,
Intellectual
Property
Department**

cmiller@cozen.com
Phone: (215) 665-7273
Fax: (215) 701-2273

Related Practice Areas

- Domains
- Intellectual Property
- Intellectual Property Litigation
- Privacy & Data Security

On April 30, 2013, Magistrate Judge Westmore recommended that the U.S. District Court, Northern District of California award Facebook \$2.8 million in damages from typosquatters under the Anticybersquatting Consumer Protection Act (ACPA). *Facebook v. Cyber2Media, Inc. et al.*, Case No. 4:11-cv-03619, (N.D.Ca., April 30, 2013). This recommendation, if adopted, also allows Facebook to recover 105 typosquatting domain names, such as Facebobk.com and Facebookwelcome.com. The real significance comes from the fact that this is the first time in which the court established a formula to determine statutory damages per domain name under the ACPA. The court also imposes contributory liability on those who intentionally provide landing websites or pages to typosquatting domain holders to redirect Internet traffic from such domain names to generate revenue and/or solicit unsuspected Internet users' personal information.

Facebook filed suit against multiple defendants including domain registrants who own domain names that incorporate or misspell the Facebook name such as Facebobk.com or Facebookwelcome.com, and Cleanser Products, which diverts unsuspecting Internet users who were attempting to access Facebook but accidentally misspelled the domain, to reach a Facebook look-alike website. Cleanser Products generates revenue from the click-through ads and solicits users' personal information from promotions and advertisements in these look-alike websites.

The court devised a formula to calculate damages based on each defendant's action incorporating the ACPA factors as well as other factors deemed relevant by the court. The factors included (i) the number of domain names registered; (ii) whether an individual defendant is a serial cybersquatter; (iii) whether Internet traffic was redirected to Cleanser Products' deceptive landing websites; (iv) whether there was an attempt to conceal the registrant's identity; and (v) whether the correct spelling of the Facebook mark was contained in the infringing domain names. The damages for each of the 11 defendant-registrants range from \$20,000 to \$1,340,000. They are also required to transfer to Facebook all rights to the 105 infringing domains and are permanently enjoined from registering, using, trafficking in or benefiting from any domain names that incorporate the Facebook mark or any names that are confusingly similar.

In addition, the court held that Cleanser Products was liable for contributory infringement given that its participation in this elaborate typosquatting-monetization scheme was particularly egregious and that it had full knowledge of the scheme. The court recommended \$80,000 in statutory damages for each of the five landing websites that Cleanser Products operated in addition to damages for the three typosquatting domains it owned. The damages totaled \$430,000.

This recommendation should have a positive impact not only to deter parties from typosquatting, but also to deter parties from providing landing websites or other related services to aid registrants in domain monetization schemes. This is not only a victory for Facebook but also a great leap forward for trademark owners in enforcing their intellectual property rights against typosquatters and cybersquatters.

To discuss any questions you may have regarding the recommendation and the formula to determine statutory damages discussed in this Alert, or how it may apply to your particular circumstances, please contact Camille M. Miller (cmiller@cozen.com or 215.665.7273).