

ALERTS

Intellectual Property Law Alert - Unprecedented Move: Vox Populi Extends Sunrise Deadline For “.Sucks” Domain Registration

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In a move that is being interpreted as possible overreaching, Vox Populi, operator of the .sucks domain name, extended the period for registering .sucks during the "sunrise period" without notice. The new deadline to register the .sucks domain name is June 19. Not only is it \$2,000 or more to register each .sucks domain name, there is also an annual renewal fee of \$2,000.

There is online speculation that Vox's extension is motivated by a relatively large surge in last minute registrations before the original deadline of May 29. This might indicate that Vox is extending the sunrise period for the purpose of taking additional profits from the registration of this already high priced gTLD.

What is a trademark owner to do?

- Some businesses are defensively registering .sucks then “parking” the domain name to prevent others from using it.
- Other trademark owners plan to proactively “own” .sucks as a way to receive and curate criticism. This is seen as a way to allow consumers to vet issues and allow companies to manage legitimate issues.
- Some trademark owners have decided to not register the domain name.

The decision that is right for individual businesses should take into account a variety of factors uniquely associated with the business and its anticipated future use of the Internet for communicating criticism about goods and/or services.

Vox is promoting the registration of this domain name as being consumer friendly providing a "voice" for the people. Vox retained Ralph Nader and Dr. Martin Luther King (via vintage film clip) as two of their celebrity spokes people to promote .sucks as a "protest word."

There has been significant controversy regarding the launch of the new domain name .sucks. Foremost is Vox's pricing strategy. Vox Populi (Voice of the People) is offering the domain name to trademark owners for \$2,000 for each registration during the “sunrise period.” The sunrise period is an initial brief period of time, usually about two months, during which a trademark owner has priority to register their trademark with the new gTLD. As an example: “chicagocubs.sucks” could be registered by the Chicago Cubs as the trademark owner during the sunrise period for

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\$2,000. Most new domain names (.coffee, .wedding, .football, .media, etc.) can be registered during their sunrise period for \$100 - \$200. However, if the Cubs decide to not register .sucks, a party qualifying for a "Consumer Advocate Subsidized" registration (as determined by Vox) can register "chicagocubs.sucks" after the sunrise period for only \$9.95.

Many trademark owners are questioning whether Vox's pricing strategy is an impermissible windfall or free speech. Some parties have already brought this matter to the U.S. Federal Trade Commission (FTC) and the Competition Bureau Canada for consideration. Although no final decision has been reached by either agency, FTC Chairwoman Edith Ramirez provided a preliminary response pointedly reminding Internet Corporation for Assigned Names and Numbers (ICANN), acting on behalf of the concerned parties, that the FTC weighed in on these and similar issues years ago prior to the launch of the new gTLD program. While Chairwoman Ramirez cannot comment on the existence of pending investigations she left the door open for monitoring the actions of registries and taking action in appropriate cases "if we have reason to believe an entity has engaged in deceptive or unfair practices in violation of [the] consumer protection authority." Chairwoman Ramirez urged ICANN to address these issues internally since the dramatic growth of gTLDs brought on by ICANN's program cannot be "feasibly addressed on a case-by-case basis" by the FTC.

Over the first 30 years of the publically accessible Internet approximately 220 gTLDs, including country codes were made available. Between 2011 and 2014 ICANN initiated a program to create new gTLDs. The stated goal of these new gTLDs was to be inclusive of new interest groups, non-Latin script languages and to anticipate the expansion of the Internet. This initiative was wildly successful with 1,930 applications being received by ICANN. After significant review of the applications approximately 1,370 new gTLDs were scheduled for launch. As of May 1, 2015, the launch of these new gTLDs is approximately one quarter completed with approximately 1,000 new gTLDs still to launch.

For more information, contact the Barnes & Thornburg attorney with whom you work or a member of the firm's Intellectual Property Law Department in the following offices: Atlanta (404-846-1693), Chicago (312-357-1313), Columbus (614-628-0096), Delaware (302-300-3434) Elkhart (574-293-0681), Fort Wayne (260-423-9440), Grand Rapids (616-742-3930), Indianapolis (317-236-1313), Los Angeles (310-284-3880), Minneapolis (612-333-2111), South Bend (574-233-1171), Washington, D.C. (202-289-1313).

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