

Duff on Hospitality Law

Protect Your Brand! Sunrise Period for Preemptive Registration of .XXX Domain Names

By Ruth Walters on 9.25.11 | Posted in Brands and Trademarks, Technology

If you have a trademark that is registered with the United States Patent & Trademark Office before September 1, 2011, and you are not in the adult entertainment business, you should consider making a pre-emptive registration of the URL [your trademark].xxx now, to prevent someone who is in the adult entertainment industry from registering it later.

[ICM Registry](#), the domain name registry administering the .xxx domain, is holding a “Sunrise Period B,” during which owners of registered trademarks who are not in the adult entertainment industry may register .xxx domains for exact matches to their registered marks. The Sunrise Period ends **October 28, 2011**. Registration can be made through a number of familiar domain name registrars listed on ICM’s site [here](#). The links on this page will take you to the registrars, where you can find additional information about how to proceed.

The Internet is administered by a non-profit corporation called the [Internet Corporation for Net Names and Numbers](#) (ICANN). It is this entity that decides, among other things, what types of top-level domains (TLDs) (.com, .net, .museum, .gov) will exist and how registration for them will proceed. There are three basic groups of TLDs: generic TLDs (gTLDs) (.com, .biz., .info), country-code TLDs (ccTLDs) (.us, .co.uk, .cn, .es, .ca) and sponsored TLDs (sTLDs) (.aero, .coop, .mobi), which require all domain name registrants to be part of the “sponsored community.”.xxx is an sTLD, and the sponsoring community consists of adult entertainment providers and suppliers to that industry.

Sunrise Period B, and earlier sunrise periods for other TLDs, are part of a general effort on the part of ICANN and the associated domain name registries, to make things a little easier for trademark owners, particularly those who may not be in the business required by an sTLD. And with this particular sTLD, you might imagine a trademark owner’s concern at not being able to protect her brand.

Of course, this is not a trademark owner’s only recourse and, because it is limited to owners of federally registered brands, is no recourse at all for owners of common-law (unregistered) marks or trademarks registered at the state level. If someone registers a .xxx with your trademark, and the site is active, you have a number of options for proceeding; however, they will almost certainly be more complicated (lawsuits, arbitration) and likely more expensive.

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So, if you are eligible, the Sunrise Period provides you an excellent opportunity to protect your brand at a comparatively low cost and with a pretty easy registration process. There may be complications—for example, if an adult entertainment provider legitimately shares your brand and has already registered the .xxx during a separate Sunrise Period—but on the whole, it's the best and earliest chance you have to help make sure your brand stays, as best it can, under your control on the Internet.

Tags: brand, domain, infringement, Internet, sunrise, trademark