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Conn. IP Lawyers Predict Problems With New 'Dot.Sucks' Domain Name

Businesses must decide whether to spend cash to block gripe sites

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The expansion of generic top level domains (gTLDs) continues at a frantic pace. With the release of new gTLDs, trademark owners must continuously assess their brand protection strategies vis-à-vis the acquisition of new domain names. One new gTLD—.SUCKS—is causing heartburn for many brand owners, especially smaller companies with limited resources.

The operator of the new .SUCKS gTLD, Vox Populi Registry, has maintained that "dotSucks is designed to help consumers find their voices and allow companies to find the value in criticism." On its face, this appears to be a noble principle. However, the Internet has historically provided endless avenues through which consumers can voice their opinions on a wide variety of topics, from politics to product reviews. Many voice their opinions anonymously or by using "usernames" and false contact information. To suggest that the .SUCKS gTLD is necessary to fill a void in this realm ignores the existence of social media giants Twitter and Facebook, as well as message boards and product review sites, among a variety of other social media outlets.

Moreover, the development of gripe sites dedicated to consumer complaints is hardly "untapped," as Vox Populi's statement implies. (See, e.g., www.paypalsucks.com.) Arguably, the .SUCKS gTLD is intended to prey on a brand owner's worst fears: the possibility of its brand falling into the hands of an ex-employee, dissatisfied customer, competitor or other individual with an ax to grind. Of course, while most companies probably wish to avoid even criticism with a basis, the more worrisome concern is that a .SUCKS site will serve as a forum for anonymous, fabricated "reviews," which might (a) be protected by Communications Decency Act immunity (and perhaps near-impossible to remove); and (b) have traffic driven to the site by the very strength of the brand at issue.

New gTLDs are required to run a "sunrise period," which provides trademark holders who have registered their marks with the Trademark Clearinghouse an advance opportunity to secure domain names that encompass their particular marks. Prices for premium domain names secured during this sunrise period have been set by Vox Populi at approximately \$2,500. To renew these domain names on a yearly basis, brand owners will have to shell out an additional \$2,500 per year. Contrast this pricing with a standard registration, obtained outside the sunrise period, which could cost an individual as little as \$249 per year.

Given the price point of .SUCKS domains, many have complained that Vox Populi is simply exploiting trademark owners rather than protecting free speech. In fact, the president of the Intellectual Property Constituency for the Internet Corporation for Assigned Names and Numbers (ICANN) has recently requested that ICANN put a hold on the rollout of the .SUCKS gTLDs, and described Vox Populi's practices as "predatory, exploitive, and coercive."

IPC's concerns caused ICANN to seek input from the U.S. Federal Trade Commission and Canada's Office of Consumer Affairs to assess the legality of Vox Populi's action. At this time, the rollout of the .SUCKS gTLD is moving forward.

The price point set by Vox Populi also begs the question: if the intent is to truly give the "little guy" a voice against the "big guy," why create a pricing scheme that inherently gives the big guy, and perhaps only the big guy, protection against such speech?

These concerns do not change the fact that the sunrise period started on March 30 and continues through May 29. Companies that want to avoid having TheirBrand.SUCKS fall in the hands of a third party have to think long (but not too long!) and hard about the investment they are willing to make in a .SUCKS domain name.

This quandary is compounded where a brand owner uses multiple marks and employs defensive strategies to combat typo-squatting, among other practices, in the registration of domain names. A hypothetical company may want to register: (1) Company.SUCKS; (2) CompanyBrand1.SUCKS; (3) CompanyBrand2.SUCKS; (4) CompanyWidgets.SUCKS; (5) BrandWidgets.SUCKS; (6) BrandWigets.SUCKS (typo intended), etc.

In other words, companies/brand owners may have to decide not whether to invest \$2,500 a year, but whether to invest \$15,000 per year (or more). Given the timing, companies who are registered with the Trademark Clearinghouse need to now determine whether they should purchase the applicable domains names before the sunrise period expires and registration is opened up to third parties. Those companies who have yet to take advantage of the Trademark Clearinghouse need to assess whether registration is now appropriate in order to take advantage of the current sunrise period.

The fact that a .SUCKS domain name could be legitimately used by a third party does not mean that all third-party registrations will withstand challenges under the Uniform Name Dispute Resolution Procedure, the Uniform Rapid Suspension System or the Anti-Cybersquatting Protection Act. For example, if a competitor registers YourCompany.SUCKS, engages in false advertising and attempts to drive traffic to its own site, such use will likely not be protected, and may even result in the domain name being transferred to YourCompany. However, gripe sites, even those that are false and anonymous, may be either immune from liability or, at least, very difficult to challenge.

So, should you take advantage of the sunrise period and shell out thousands (or even tens of thousands of dollars)? Like most things, that depends. While it would be wise to involve a lawyer in these discussions—for example, to fully understand what types of statements or conduct would and would not be allowed on these sites under applicable law—in large part this decision will depend on marketing and corporate philosophy.

Companies have had to make similar decisions in whether they themselves register (and thus block others from registering) MyCompanySucks.com. Though similar, the decision whether to register .SUCKS domains will be different in magnitude, both in terms of cost and the cache/exposure that a dedicated gTLD will provide. Brand reputation and goodwill are at stake.

Even if you decide to do nothing, that should be an informed decision. Many will decide that having to make this decision at all .SUCKS!

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