

.xxx domain names: a Red Light warning to brand owners



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The launch of a new .xxx top level domain in September 2011 presents a potential nightmare scenario for many brand owners in the Middle East. In a traditionally conservative region with values based on the Islamic faith, many brand owners will be extremely concerned by any potential association between their brands and the "adult entertainment" industry.

With reports of over 150,000 pre-registration requests being made for .xxx domain names, the scope for brands to be misappropriated and used inappropriately is clear. The launch of the .xxx domain includes a mechanism for trade mark owners to reserve their registered trade marks to block corresponding .xxx domain names.

As with other recent launches of domain names, the .xxx domain will be launched through a "Sunrise Period".

The Sunrise Period

The Sunrise Period for .xxx domain names, outlined below, starts on 7 September 2011 and ends on 28 October 2011.

- **Sunrise A:** entities in the adult entertainment field who have successfully completed a Membership Application, may apply for their domain name(s) under the .xxx domain, if they own:
 - (i) a corresponding domain name which was registered prior to 1 February 2010 in another domain (such as .com); or,
 - (ii) a corresponding trade mark for the domain name in question.
- **Sunrise B:** trade mark owners who wish to prevent others from using their registered trade marks under the .xxx domain can apply for reservation (blocking) requests. The supporting registered trade mark must have been issued prior to 1 September 2011. If granted, the reservation request will resolve to a standard information page only. It will not convey any other rights to the trade mark owner.

What if two Sunrise filings are sought for the same domain name?

Where there are two or more filings in the Sunrise period for the same domain name, all applicants will be notified of the other Sunrise application(s). The applicant(s) from Sunrise A will have the opportunity to withdraw its application. If it does not, it will not be able to claim lack of notification in any subsequent dispute proceedings.

Trade mark owners in Sunrise B should note that their registered rights will only block applications for domain names for the identical word(s). It will not block a typographical variation. The rights holder will have to bring an action under the dispute resolution procedure for .xxx domain names in order to stop such registrations.

Landrush and general availability

The Landrush period opens on 8 November 2011 and closes on 25 November 2011. During this period, members of the adult entertainment community can file applications for domain names. A closed auction will be held where more than one application is filed for the same domain name.

The .xxx domain name will be open to everyone from 6 December 2011, following which they will be allocated on a first come first served basis.

Next steps

It is important for Middle East based brand owners to take steps now to protect their qualifying registered rights during the Sunrise period.

This proactive step is likely to be more cost effective and administratively easier than having to take remedial action against a conflicting or abusive .xxx domain name that has been registered by a third party.

Brand owners should also put in place processes and procedures to monitor for potentially conflicting or abusive domain names. This is particularly important for trade marks that do not meet the qualification requirements for reservation requests for Sunrise B.

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