

**ALERT FOR BUSINESS OWNERS AND MANAGERS**  
***PLEASE READ THIS ENTIRE ALERT***

Trademark owners have a small window of opportunity to inexpensively make sure their valuable trademark or tradename remains unassociated with the adult entertainment industry.

The company in charge of administering the domain name system, the Internet Corporation for Assigned Names and Numbers (ICANN) has decided to add a new top-level domain name that pertains to your trademark.

Each of you knows what top-level domain names are, but you may not know them by that name. Any time an Internet user types a domain name into a web browser, for example, the text following the final dot is the top-level domain name (TLD). Thus, in the domain name – www.Chrysler.com – the "com" portion of the domain name is the TLD. Currently, there are only a handful of TLDs. But ICANN has decided to add a "XXX" TLD. While this TLD is dedicated to the adult entertainment industry, **DON'T QUIT READING.**

If you own trademark rights in the name, SYSTEMIC, for example, current law (essentially world-wide) and established arbitration procedures allow you in most cases to retrieve SYSTEMIC.XXX from someone who may decide to register your trademark with a XXX top-level domain name. But the cost of doing so, in the least expensive manner starts with an arbitration fee of 1400-1600 USD. If you use in-house resources or an outside law firm to attend to the matter, factor in several thousand dollars for this cost, as well. Freeing your trademark from the XXX moniker could easily run to five figures even if you manage to avoid a trademark infringement suit in doing so.

Starting on September 7, 2011, and ending October 26, 2011, (the application must be submitted ahead of the final deadline of October 28, 2011 to be considered), a person or business with provable trademark rights can apply to have their trademark removed from the pool of available XXX domain names. One does

this by paying a filing fee for a non-resolving domain name with the registry for the XXX domain names. The trademark owner must be able to prove up its ownership of the mark through a federal trademark registration or equivalent foreign registration. While registering your own name with the XXX may be distasteful, it is far less expensive than resorting to arbitration or litigation. And it is the most straightforward way to protect a domain name from the XXX TLD.

If a company does not have a federal registration, it can wait until the XXX TLDs are available for the general public and then purchase a non-resolving domain name with its trademarks or current domain names joined to the XXX TLD. The system at that time will be first-come-first-served, which means that someone could get the company's domain name before the company did.

Please contact Bob Itri, Steve Lawrence or Chuck Runyan for additional information. Or, if you are already a client of Gallagher & Kennedy, you may wish to contact your usual Gallagher & Kennedy attorney to find out about us handling the process for you.

Disclaimer: Bob Itri, Steve Lawrence and Chuck Runyan providing this article and you reading it does not mean that they have provided you legal advice. Since all legal matters are intensively fact specific, all matters require individualized consideration. In view of that, you should regard this article as GENERAL guidance and not as a definitive statement of the law. Their comments are non-specific and you should not rely on them as legal advice. They do not offer you legal advice or become your attorney until: (i) you first elect to hire them, (ii) you and they sign an engagement agreement that sets forth what legal services they will provide and how you will be charged, and (iii) you pay any required fee or security deposit.

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