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New Top Level Domain Names: REVEAL DAY is Coming

TechComm and Intellectual Property Client Alert

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Reveal Day is coming: On June 13, 2012, ICANN is expected to release information about the applications received for the new generic Top Level Domains (gTLDs). The application period for the new gTLDs – like .brand or .soda -- closed on May 30, 2012.

What is Reveal Day?

On Reveal Day, ICANN will publicly post certain key information about the new gTLD applications. ICANN will disclose the gTLD character “strings” (or domains) that have been applied for, the identity of each applicant, and how the applicant intends to use the domain – for instance as a “closed” domain accessible only to a limited type of user, or as an “open” domain that will be available to the public.

Current speculation is that ICANN received applications for more than 1900 gTLDs. Some of those applications may not pass the review process. However, since the application fee was \$185,000 and applications required significant technical and other data, filing a gTLD application was not an impulse action. All applications are confidential until Reveal Day. Even then, ICANN will disclose only limited data on Reveal Day.

Why is Reveal Day Important?

Trademark owners are on the alert— on Reveal Day, they will learn what gTLDs have been applied for, and the applicants’ identities. That will enable trademark owners to assess whether any proposed gTLD infringes or would dilute a trademark, and whether a competitor (for example) has applied for a generic name gTLD that could drive consumers to its site (for example, .phone or .car). The information disclosed on Reveal Day will be very important for brand strategies and protective measures.

PLEASE NOTE: The Patton Boggs Trademark Group intends to review the gTLDs for our current trademark clients. Contact one of the attorneys listed on the left if you would like more information about our gTLD monitoring and trademark protection services.

What does Reveal Day Trigger?

Reveal Day triggers certain time periods for comments or objections. For example, if a proposed gTLD name infringes a trademark, the brand owner may want to object to the application. Anyone can object (worldwide) although as noted below, stiff fees may discourage some from filing formal objections. The basic options following Reveal Day are:

1. Comment Period. For 60 days after Reveal Day (so until about August 12, 2012), comments on any application may be submitted, at no charge. The comments will be reviewed by the ICANN Evaluation Panel, in assessing whether the applications meet certain technical and public interest criteria. For example, a brand owner can comment that an applied-for string would infringe its trademark rights, or that the applicant is known for its unreliable service.
2. Formal Objections Period. For seven months after Reveal Day (so until about January 12, 2013), formal objections may be made to any of the proposed Top Level Domains or strings. Caveat: the ICANN Evaluation Panel will release its determinations about some gTLD

applications before the end of the Formal Objections Period. For those applications, the Objections Period will close two weeks after the evaluation is posted. So trademark owners will need to strategize and monitor the ICANN review process to follow the progress of any targeted applications.

3. Basis for Formal Objections. Formal objections must be based on one of the following specific grounds: string confusion, legal rights infringement (such as trademark infringement), that the proposed gTLD would violate general moral principles (“limited public interest” objection), or that the proposed gTLD would not serve the interests of the specified community (“community” objection).

4. Formal Objections Process. ICANN appointed specific dispute resolution experts to handle the formal objections. World Intellectual Property Organization (WIPO) arbitrators have been selected to resolve trademark legal rights objections. The International Chamber of Commerce will determine the limited public interest and community objections.

5. Objection Process. Each objection must be filed in English and be accompanied by the required fees. Some of the filing fees are quite steep—for example, an entity filing an objection based on trademark infringement must pay at least a \$10,000 filing fee, possibly more if a multi-arbitrator panel is requested or the objection involves multiple objections. Objections must be filed electronically on specified forms. For more details about the objections process, see <http://newgtlds.icann.org/en/en/program-status/objection-dispute-resolution>.

6. Preparing for Reveal Day. We urge all trademark owners and others to monitor the ICANN postings on Reveal Day, as the new information will be important to trademark and marketing strategies. The free Comment Period is very short, so quick action will be needed. Although formal objections are more expensive and time-consuming, having objections heard by dispute resolution experts will lead to more considered decisions.

7. Trademark Clearinghouse. Separate from the objections process, ICANN will be establishing a Trademark Clearinghouse to assist trademark owners in protecting their marks. The Trademark Clearinghouse is not yet established. It will operate at the next level down—for instance, at the lodge.soda level (where .soda is the gTLD registry doling out the lodge.soda domain name). We will provide additional information on how trademark owners can register with the ICANN Trademark Clearinghouse after ICANN releases specific details.

Patton Boggs Intellectual Property and TechComm attorneys have been assisting clients with the gTLD process. We urge our clients and others to monitor the Reveal Day postings to ensure protection of their interests. We are partnering with an international service provider to best service all our clients’ needs relating to Reveal Day and the ICANN gTLD comment and objections processes. We would be pleased to answer any questions about these issues.

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