

DOMAIN NAME ALERT

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What's Up With .eu?

by Travis Bachman, Trademark Attorney and Jeff Cadwell, Summer Associate

.eu is the new Top Level Domain (“TLD”)* for the European Union (“EU”). .eu will be the first domain space that is not purely generic (such as .com), industry-specific (such as .coop) or tied to an individual country (such as .us).

Why consider a .eu domain name?

Because it will serve the entire European Union, .eu could become the second most popular TLD in the world, rivaling only the .com TLD. Furthermore, .eu will represent the 25 current (as well as any future) members of the EU. It will be important and highly beneficial for companies who currently have a significant presence in the EU or for companies who plan to increase their presence in the EU market to establish an Internet presence under the .eu TLD. The advantage of having a .eu domain name is that companies can have a single, local Internet identity for the entire EU in addition to or in lieu of Internet identities in each individual country.

Trademark holders will want to take advantage of the early registration sunrise period, as there will likely be heavy competition for many domain names. Once the sunrise period ends, registration will be open to anyone who meets certain local presence requirements, regardless of trademark rights. The cost of obtaining a domain name during the sunrise period will be significantly less expensive than using arbitration or a legal challenge to attempt to obtain a domain name after it is registered by another party.

Who is eligible to register a .eu domain name?

A party seeking to register a .eu domain name must fall into one of three groups:

- (i) an undertaking having its registered office, central administration or principal place of business within the European Community; or
- (ii) an organization established within the Community without prejudice to the application of national law; or
- (iii) any natural person resident within the Community.

Essentially, companies that wish to register a .eu domain name must either: (1) have an office or other physical presence in one of the 25 EU countries, or (2) have a local presence in one of the 25 EU countries through an affiliate, subsidiary, or other contact. To register a .eu domain name during the sunrise period, a company must also possess certain trademark rights, as explained on the following page.

* A top level domain is the suffix of an Internet address. For example, in the website address www.dorsey.com, the “.com” is the top level domain.

What is the registration process?

.eu		
Period	Date	What is Happening
Preparation Period	Prior to 4th Quarter 2005	Determine whether your company meets the sunrise eligibility requirements. If your company does not meet the eligibility requirements, file national trademark or Community Trade Mark applications and establish a local presence in the EU.
Sunrise Period Phase 1 (Two Months)	4th Quarter 2005	Holders of <i>registered</i> national trademarks or Community Trade Marks, geographical indications, and public bodies may apply for .eu domain names, if they meet local presence requirements.
Sunrise Period Phase 2 (Two Months)	4th Quarter 2005 (immediately following <i>Phase 1</i>)	Those eligible to register during <i>Phase 1</i> as well as any other holders of prior rights (such as unregistered trademarks, trade names, company names, family names, or distinctive titles of literary and artistic works) may apply for .eu domain names, if they meet local presence requirements.
First-Come First-Served Period	Immediately following the end of the Sunrise Period	Remaining domain names will be available for registration on a first-come, first-served basis. Although local presence requirements still apply, no proof of recognized rights in a name will be required during this period.
.eu Goes "Live"	Expected to be 1st Quarter 2006	All properly registered and approved .eu domain names become operational.

Within 40 days of applying, the applicant must submit documentation supporting its right to the name to be registered. PricewaterhouseCoopers ("PWC") in Belgium has been appointed the validation agent for the .eu TLD. PWC will validate every application during the sunrise period to ensure that the applicant meets eligibility requirements, even if there is no challenge to registration. The purpose of validation during the sunrise period is to avoid cybersquatting issues.

For companies without EU trademark rights or a physical presence in the EU, it may be possible to affiliate with a parent, subsidiary, distributor, licensor or licensee to meet the trademark and/or local presence requirements. PWC has indicated that they will accept applications on this basis, although the specific forms and procedures are still being created.

Registration costs will consist of a validation fee and a registrar fee. While these costs have not been set, the registrar fee is expected to be low. The validation fee will be higher and nonrefundable, so it is important for companies to make sure they fit within the registration criteria set forth above when they apply.

What are the procedures for challenging registrations?

The EC policy rules contain a procedure for “speculative and abusive registrations” that is quite similar to the Uniform Domain Name Dispute Resolution Policy (“UDRP”). Under this procedure, a domain name is subject to revocation if: (1) the name is identical or confusingly similar to a name in respect of which a right is recognized by national or Community law; (2) the name has been registered by a party with no rights or legitimate interest in the name; and (3) the name has been registered or is being used in bad faith. If a domain name is revoked, it can be transferred to the complainant if the complainant applies for the domain name and satisfies the general eligibility requirements. The Czech Arbitration Court has been selected as the dispute resolution provider for .eu.

Interested?

For companies that have a presence or are planning to expand their presence in the European Union, a .eu domain name will provide a strong local Internet identity. Dorsey & Whitney's Trademark, Copyright and Brand Management Group would be pleased to assist your company by preparing and submitting .eu domain name applications. If your company does not meet the eligibility requirements but envisions having a European presence in the future, we would be happy to discuss a strategy with you to establish eligibility. We can assist you with filing a Community Trade Mark (“CTM”) application and with licensing or affiliation arrangements to qualify for early registration of a .eu domain name. If you do not wish to file a CTM application, Dorsey & Whitney can also assist you in filing national trademark applications in any of the 25 EU member nations. We will send out further electronic updates as new information regarding the .eu domain name becomes available. If you have any questions, please contact one of the attorneys listed below.

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