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INTELLECTUAL PROPERTY  
FOULSTON SIEFKIN ISSUE ALERT

# NEW .XXX DOMAIN NAME REGISTRY ANNOUNCED: ACT NOW TO PROTECT YOUR BRAND

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A NEW .XXX DOMAIN NAME REGISTRY is being introduced for adult entertainment websites. If you want to stop your trademark from being available as a “yourbrand.xxx” domain name, you can submit a Sunrise B application until October 28, 2011. If approved, no one will be able to register “yourbrand.xxx.”

To be eligible, you must own a U.S. or foreign trademark registration issued before September 1, 2011 for the trademark you wish to reserve. Only the exact trademark can be protected. But special characters in registered marks such as “&, !, or @” may be transcribed, replaced with a hyphen, or eliminated. Similarly, references such as “TM” or “LLP” may be eliminated. Typos or variations of trademarks cannot be protected until General Registration starts on December 6, 2011.

To stop use of your brand as an .xxx domain name you will want to file a “Sunrise B” application, which will preempt others from registering an .xxx domain name for your registered mark for at least 10 years, if approved. A Sunrise B applicant will not own the .xxx registration, but will have the right to exclude others from registering the domain name. The proactive Sunrise B process may be very attractive to trademark owners who want to avoid having their marks and brands associated with adult content and .xxx domain names.

The full details of Sunrise B can be found at the following ICM Registry link: <http://www.icmregistry.com/launch/sunrise-b/>.

### **What Should You Do?**

Time to act is short. Sunrise B is only available until October 28, 2011. Registration for parties in the adult entertainment industry will begin shortly

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after that in November. General registration for everyone else begins on December 6, 2011.

For those who want to prevent their brands from being associated with an .xxx domain name, the Sunrise B procedure is highly recommended. The filing fee is about \$300, and registration can save the time and expense of monitoring and preventing offending uses for the next 10 years. In short, Sunrise B is inexpensive, simple, and avoids costly issues that could arise later.

To prevent others from registering a “yourbrand.xxx” domain name, navigate to any of the accredited registrars at following the link, and fill out a Sunrise B application: <http://www.icmregistry.com/registrars/>.

Your failure to submit a Sunrise B application will not prevent you from challenging a registered .xxx domain that you believe infringes your trademark rights. Your trademark rights, as well as cybersquatting and UDRP remedies, are not affected by your decision not to pursue a Sunrise B application or a general registration after December 6, 2011. If you choose not to pursue a Sunrise B application or a general registration and later find that a third party registered an .xxx domain name incorporating your registered or unregistered brand, you retain the right to challenge the registration and pursue your legal remedies.

If you have any questions or would like help with a Sunrise B registration, feel free to contact either of the attorneys listed below.

## FOR FURTHER INFORMATION

Foulston Siefkin’s intellectual property lawyers concentrate on copyright, trademark, trade secret, patent, unfair competition, and related intellectual property (“IP”) matters. The Intellectual Property Team analyzes IP assets to explore potential liabilities and proposes practical protection strategies, always tailored to our clients’ needs and decisions. The IP strategies are then carefully crafted and vigorously prosecuted. For additional information regarding the New .XXX Domain Registry Announced: Act Now to Protect Your Brand, or if you need intellectual property protection assistance, contact either **Gordon G. Kirsten** at **(316) 291-9538** or **gkirsten@foulston.com**, or **William P. Matthews** at **(316) 291-9556** or **bmatthews@foulston.com**. For more information on the firm, please visit our website at **www.foulston.com**.

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