

.Sucks CEO Says Firm Aims To Criticize, Not Extort

By **Bill Donahue**

Law360, New York (May 14, 2015, 9:12 PM ET) -- The operator of the new .Sucks Web addresses has come under harsh scrutiny in recent weeks, with many accusing the company of a “predatory scheme” to wring money out of trademark owners. Speaking with Law360, John Berard, the man behind the controversial plan, tells his side.

For a guy whose company, Vox Populi Ltd., was repeatedly likened to an extortion racket at **a congressional subcommittee hearing** hours earlier on Wednesday, Berard is pretty calm in explaining just what it is he and the firm are trying to do.

Spoiler alert: It's not “extort brand owners into forking over pricy fees with the fear of unflattering Web addresses.”

“What we have the chance to do is create a platform, an opportunity — maybe we can call it a clean, well-lighted space — for criticism, where companies can curate, collaborate, moderate and gain valuable insight from it,” Berard said in a phone interview Wednesday.

“I probably sound like a lunatic to most people, but I've been in the marketing and communications business for 40 years, and I've seen the value of hearing what people have to say about you, good or bad.”

As evidenced at Wednesday's hearing, a lot of folks — at least those who work in the world of trademark law — don't buy that explanation.

The Internet Corporation for Assigned Names and Numbers, or ICANN, is in the middle of a multiyear process of rolling out hundreds of similar new generic top-level domains, or gTLDs — .bike, .NYC, .bank, and so on. Citing the need for competition, ICANN is moving the world of Web addresses from just 12 dot-extensions to more than 1,400, all run by private, for-profit groups that spent big money for the right to do so.

To be fair to Vox and .Sucks, this situation had already angered the trademark law rank-and-file in a more general sense. Where attorneys previously had .com, .org and other traditional domains to police for unauthorized copycat URLs, they now have more than 100 times more real estate to cover. ICANN created new processes to challenge infringing names, but that still takes time and money.

At best, the rollout of the new gTLDs has been seen as a solution in search of a problem; at worst, as in the case of the protection services offered by companies like Donuts Inc., it's been seen as a tax on brand owners that don't want a flood of similar URLs on the Web.

But .Sucks has **drawn particular ire**, and here's why.

For one, once a trademark-protected name has been registered as a .Sucks Web address, it'll be relatively more difficult for the owner to get it taken down than on other new gTLDs. That's because ICANN's dispute process — the Uniform Domain Name Dispute Resolution Policy — specifically affords greater protection to names that appear to criticize or parody a brand. An address of "yourbrand.sucks" will inherently do that.

But even more, it's Vox's unusual pricing that has drawn criticism. During the so-called sunrise period, a window created

to give trademark owners first dibs at their names, the company is charging a “premium price” of \$2,499 to companies that want to lock up URLs — many times more than the few dollars being charged on other registries. After that period ends, Vox is going to charge the general public \$249 for the same addresses.

That disparity is where the claims of extortion and price-gouging come from: charging a trademark owner a special increased price before offering it to third parties for far less. Vox has strongly denied any wrongdoing, even **threatening defamation lawsuits** over the accusations.

On Wednesday, Berard reiterated that the unusual prices weren't set to capitalize on defensive registrations, nor to incentivize non-trademark owners to buy up protected names.

“We set those prices based on what we see as the value of these names,” Berard said, flatly denying that defensive registration factored into that valuation. “This is one of the few registries that has actually taken the time to consider the economic value of what it is offering for sale.”

What critics are missing, he said, is that the \$249 “regular” price is also far more than what other registries are charging the general public, which often is as little as 99 cents. Those “symmetrically” heightened prices were designed to avoid both brands that merely want to lock up the names and cybersquatters or bad actors that want to scoop them up, Berard said.

“We don't want to flood the market with names that will not be used in the way that we hope that will be used,” Berard said, meaning for “legitimate critical commentary” about corporate brands. “We've set prices that we think reflect the value of these names as they're put to use.”

Whether that answer will suffice for Vox's toughest critics remains to be seen. Rep. Darrell Issa, R-Calif., called .Sucks “legalized extortion” at the hearing Wednesday, and ICANN has **asked federal regulators** to look into those kinds of claims.

“I’m not a lawyer, so if someone is going to say I’m extorting somebody, I don’t really know what that means,” Berard said. “What I do know is that we’ve taken great pains to put together a set of policies and practices that I think are respectful, and reflective of the market.”

--Editing by Jeremy Barker and Brian Baresch.