

David Weslow Discusses ICANN Domain Registry Suit

Law360

August 20, 2012

David Weslow, a partner in Wiley Rein's Intellectual Property Practice, was interviewed by IPLaw360 after a federal judge allowed an antitrust suit involving the top-level domain '.xxx' to proceed against the Internet Corporation for Assigned Names and Numbers (ICANN) and the domain registry operator. The suit alleges, among other things, that by awarding the '.xxx' domain registry, ICANN created an anti-competitive market for 'defensive registrations' needed by trademark owners to block third parties from using their trademarks as .xxx domain names.

The article reported that a California federal judge "denied ICANN's motion to dismiss the suit over the '.xxx' domain, rejecting the group's argument that, as the nonprofit body tasked with overseeing Internet addresses, it does not engage in commerce and is immune from antitrust liability."

Mr. Weslow reminded Law360 that earlier this summer, ICANN announced it had received nearly 2,000 applications from parties interested in operating new generic top level domains (gTLDs), and some of those applications raise the same issues for brand owners as '.xxx.' "Certain registrations are not going to provide any benefit and will be more of a problem because they're designed to take in defensive registration fees," Mr. Weslow said.

The '.xxx' suit names ICANN as a defendant along with the domain registry operator, ICM Registry LLC. After the judge's ruling, Mr. Weslow said it appears likely that any future suits over the new gTLDs will name both the domain operator and ICANN as co-defendants. "This ruling will be looked at closely by companies concerned by the

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current gTLD program when evaluating their options with respect to ICANN," Mr. Weslow said.