

World Trademark Review Daily

Anyone may now apply for 'fundamental' terms under '.fr'
France - Hogan Lovells

Internet issues

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There has recently been a fundamental shake up of French law relating to domain names.

On October 6 2010 the French Constitutional Court held that L45 of the French Posts and Electronic Communications Code, as well as the corresponding statutory instrument (Articles R20-45-34 ff of the code) were unconstitutional (for further details please see ["Rules applicable to '.fr' domain names found to be unconstitutional"](#)).

As a result, the French Parliament adopted a new act on March 22 2011 which substantially modified the provisions regarding the allocation and management of domain names under the '.fr' extension. The new provisions entered into force on June 30 2011.

While some of the new provisions of the code resulting from the act in fact merely pass into law former regulatory provisions, a number of them have substantially amended the rules relating to the allocation of domain names (for further details please see ["Alternative dispute resolution procedures for '.fr' suspended"](#)).

In particular, the new provisions of the code change the rules regarding the conditions under which the registration of a domain name can either be rejected or cancelled by the French domain name registry, [AFNIC](#). The former provisions specifically set out categories of domain names which could not be registered by the general public, but the new rules provide that, in theory, any name which is not likely to infringe public order, public morality or rights guaranteed by the French Constitution can be registered by any eligible entity, provided that the registrant has a legitimate interest to do so and acts in good faith.

A list of over 1,500 so called 'fundamental' terms appeared on the AFNIC website. Fundamental terms are divided into:

- banned terms that simply could not be registered because they are considered unlawful or contrary to public policy, for example because they are racist, rude or related to illegal activities (exceptions could be approved by the AFNIC board of directors); and
- terms which were reserved and could be registered only by the relevant state body or municipality.

Banned terms are grouped into categories relating, for example, to crimes, values, health and human rights, although the full list is not publicly available and may only be obtained upon request to avoid causing offence (the list is non-exhaustive and may change as new terms are added).

As of July 1 2011, as a result of the new legislation, anyone may apply for a 'fundamental' term under '.fr', as long as they have a legitimate interest and act in good faith. Thus, there is no longer a blanket ban on certain terms, although what this means in practice has yet to be seen. For example, an application to register 'tueurs.fr' ('killers.fr' in English) may not be refused if the applicant provides evidence that the domain name will be used to point to the website of a rock band, but clearly this may not be the case if the applicant wishes to use it to advertise illegal services. By the same token, reserved terms may now be applied for by anyone - not just, for example, the relevant municipality. Commentators have pointed out that the names of many French municipalities, previously reserved for use by the place in question, could be very valuable (eg, many are common first names, or surnames, or could be used as generic words).

Applications will be published on the AFNIC website and examined on a first-come, first-served basis. It is not yet clear how AFNIC will approach this exercise, and exactly what standard of proof will be required to justify legitimate interest and/or good faith. However, applicants interested in any of the newly available terms would be advised to apply as early as possible and to provide as much evidence as possible to justify their request.

The list of fundamental terms (in French) which has become available for registration can be found on AFNIC's website.

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