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Intellectual Property, E-Commerce and Entertainment Law

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Selected Legal Info, News And Trends

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## **HERE COMES 2008!**

The new year seems to be off to a rollicking start. Between the surprising results of the Iowa caucuses and the record voter turnout for the New Hampshire primary, it looks like this is a going to be an exciting year – especially because this will be the first presidential election in over 50 years where there is no incumbent president or vice-president running for President. Yes, there seems to be some uncertainty about the economy; but given that this is an election year, we expect the powers that be to attempt to manage the economy so that economic problems are not an election factor come November. Whether that effort will be successful is hard to tell. What we do know is that entrepreneurs and businesses are going to have to work smarter than ever to stay competitive and successful.

Toward that end we are still recommending our favorite business book of the last several years: [Blue Ocean Strategy: How to Create](#)

[Uncontested Market Space and Make Competition Irrelevant](#) by Kim & Mauborgne. Utilizing case studies of such paradigm-shifting businesses as Cirque du Soleil, Curves, Starbucks and Southwest Airlines, the authors show how to grow your business not by bloody head-to-head competition for market share but by creating new markets by going where your competition fears to tread.

Now: on to a brand new and alarming trend regarding domain names that we believe entrepreneurs and businesses will want to be aware of: a new version of domain name poaching called Front Running.

## **BE WARY OF DOMAIN NAME POACHERS AND FRONT RUNNERS:**

Have you ever searched for the availability of a domain name and wondered whether somebody might be out there watching and waiting to scoop up the name if you don't register it right

away? We have too. And now the evidence is in. They are!

A recent report in the NY Times online and a posting at domain name registrar Network Solutions Inc. (“NSI”) have confirmed that sophisticated domain name scam artists have figured out how to watch when domain names are searched for availability at a domain name registrar such as NSI or GoDaddy.com and then instantly (or shortly thereafter) register the domain name out from underneath the searcher if the domain name isn’t registered right away. This has come to be known as “Front Running”.

Front Runners get access to this information from Internet Service Providers, spyware or registries. Front Running is different than traditional cybersquatting where someone registers a domain name based on your trademark and then tries to sell it to you at an exorbitant price. It is also different than traditional domain name poaching that occurs when someone forgets to renew their domain name and a poacher swoops in to register it as soon as it expires in the hopes of selling it back to the rightful owner at a premium. Front Running occurs as you are searching a domain name (or shortly thereafter) if you do not register it as soon as you determine the domain name is available.

The legality of Front Running is questionable at best, but because it is so new there haven’t been any reported cases yet. And so far the domain name registrars have yet to come up with a solution to stop it – although NSI claims it has. NSI recently started to register domain names for itself when the searcher doesn’t register a searched

name right away. NSI claims that it is trying to protect its customers from unscrupulous Front Runners and that it is simply reserving the domain name for four days so that the searching party can take some time to decide whether or not to actually buy it; but it seems to us that NSI is doing the very thing it is trying to prevent. Since NSI locks up the name and prevents it from being registered through any other domain name registrar during the four day period, that effectively forces the searcher to buy the domain name from NSI or risk having it released to the open market after four days and purchased by a Front Runner.

Our advice: if you are even remotely interested in a domain name, register it as soon as you determine it is available. Don’t wait! There are a number of reputable domain name registrars out there that charge \$10 or less per year for a domain name. That is a small price to pay for securing a piece of potentially valuable Internet real estate. Not only that, we have confirmed that Godaddy.com will allow you to cancel the domain name transaction within five (5) days and get your money back. Therefore, by registering a domain name immediately and then canceling the transaction within five days if you change your mind, you will essentially be reserving your rights to the domain name for that five day period.

**Coming next month:** Trademarks and the Rise of Alphanumeric Naming: What We Can Learn.

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