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8 **UNITED STATES DISTRICT COURT**  
9 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

10  
11 **REGISTERSITE.COM, an Assumed**  
Name of ABR PRODUCTS INC., a  
12 New York Corporation, *et al.*,

13 Plaintiffs,

14 v.

15 **INTERNET CORPORATION FOR**  
ASSIGNED NAMES AND  
16 NUMBERS, a California corporation,  
*et al.*,

17 Defendants.  
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Case No. CV 04-1368 ABC (CWx)  
Hon. Audrey B. Collins

**PLAINTIFFS' OPPOSITION TO  
MOTION TO DISMISS FIRST  
AMENDED COMPLAINT BY  
DEFENDANT ENOM, INC.**

DATE: July 12, 2004  
TIME: 10:00 a.m.  
COURTROOM: Room 680 –  
Roybal Bldg.

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1 I. INTRODUCTION

2 Defendant eNom, Inc. (“eNom”)<sup>1</sup>, in its Motion to Dismiss First Amended  
3 Complaint (“Motion”), argues that Plaintiff’s Third Cause of Action against it  
4 should be dismissed.<sup>2</sup> In support of this claim, eNom has submitted exhibits from its  
5 own website that purport to allow a fair analysis of the representations eNom makes  
6 to consumers. As the attached Exhibit A indicates, however, the most prominent  
7 pages on eNom’s website – which eNom neglected to provide to this Court –  
8 contain a number of misleading statements. Moreover, those misleading statements  
9 are directed toward ordinary consumers rather than the “sophisticated purchasers”  
10 eNom claims are its target audience.

11 Plaintiffs plead in their first amended complaint (“FAC”) a false advertising  
12 claim that is sufficiently plain and straightforward. As Plaintiffs allege in their Third  
13 Cause of Action, the statements on eNom’s website will lead subscribers to believe  
14 that they have a much higher chance of obtaining a desired domain name registration  
15 under eNom’s “First Dibs” service than they actually have. eNOM admits its  
16 statements are so confusing that to clarify them “would, at best, be unhelpful and  
17 would be misleading in most circumstances.” Plaintiffs’ recitation of statements on  
18 eNom’s website are even more definite than other statements this court has held  
19 “adequately stated the facts” to support an unfair competition claim.<sup>3</sup> Accordingly,  
20 this Court should deny eNom’s motion to dismiss Plaintiffs’ Third Cause of Action.

21  
22  
23 <sup>1</sup> eNom’s claim that Plaintiffs have agreed to substitute eNom, Inc., a Nevada corporation, for the  
24 current eNom plaintiff in a Second Amended Complaint, is incorrect. Plaintiffs actually have agreed to  
25 **add** the Nevada entity as a plaintiff. eNom’s statement that Plaintiffs have agreed to voluntarily dismiss it  
26 from their Ninth Cause of Action, however, is accurate.

27 <sup>2</sup> eNom has also joined in and incorporated by reference the arguments of defendants Verisign, Inc.  
28 and Network Solutions, Inc. (collectively, “Verisign”) in Verisign’s motion to dismiss Plaintiffs’ claim  
pursuant to FED. R. CIV. P. 12(b)(6). Accordingly, Plaintiffs have not re-argued those issues in this  
memorandum, and incorporate their response to Verisign’s motion by reference herein.

<sup>3</sup> See Perfect 10, Inc. v. Cybernet Ventures, Inc., 167 F.Supp.2d 1114, 1125 (C.D.Cal. 2001).

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## II. FACTS

Plaintiffs are domain name registrars. (FAC ¶ 1.4.) This case involves several technical and contractual issues relating to defendants' Wait Listing Service ("WLS"), which "purports to give consumers, for an annual fee, the right to be 'first in line' on the 'waiting list' for currently-registered <.com> and <.net> domain names." (FAC ¶ 1.1.) Plaintiffs allege "Defendant eNom is currently advertising to consumers, and taking 'pre-orders' for 'First Dibs', eNom's branding of the Verisign WLS service. Nowhere in any part of eNom's advertising, or elsewhere in the sales process, does eNom disclose the likelihood that a subscriber will obtain the domain name to which it subscribes." (FAC ¶ 7.6.)

Plaintiffs further allege "[t]he truth that eNOM should disclose to consumers is that most subscriptions will not result in the actual registration of any domain name." (FAC ¶ 7.12.) Plaintiffs add that "[d]isclosing the likelihood that a WLS subscription will be successful would not suffice to make [eNOM's] advertising for WLS subscriptions fair". (FAC ¶ 1.3.) Indeed, in its Motion eNOM admits that such a disclosure would probably not cure the deception. (Motion at 6:20.) Rather, eNOM concedes that to warn consumers about the substantially low likelihood of ever actually registering a domain name "would, at best, be unhelpful and would be misleading in most circumstances." (*Id.*)

## III. ARGUMENT

### A. FED. R. CIV. P. 12(B)(6) MOTION STANDARD

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A court may not dismiss a complaint for failure to state a claim "unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957); *see also Moore v. City of Costa Mesa*, 886 F.2d 260, 262 (9th Cir. 1989); *Haddock v. Bd. of Dental Exam'rs*, 777 F.2d 462, 464 (9th Cir. 1985) (court should not dismiss a complaint if it states a claim under any legal theory, even if plaintiff erroneously relies on a different theory). Dismissal is proper under FED. R. CIV. P.

1 12(b)(6) only where there is either a "lack of a cognizable legal theory" or "the  
2 absence of sufficient facts alleged under a cognizable legal theory." Balistreri v.  
3 Pacifica Police Dep't, 901 F.2d 696, 699 (9th Cir. 1988).

4 FED. R. CIV. P. 8(a) guides determination of whether a complaint states a  
5 claim. It provides that a complaint need only contain "a short and plain statement"  
6 of the pleader's claim showing that the pleader is entitled to relief. FED. R. CIV. P.  
7 8(a). The facts upon which the plaintiff bases his claim need not be set out in detail.  
8 Conley, 355 U.S. at 47. "[A]ll the Rules require is 'a short and plain statement of  
9 the claim' that will give the defendant fair notice of what the plaintiff's claim is and  
10 the grounds upon which it rests." Id.; see Swierkiewicz v. Sorema N.A., 534 U.S.  
11 506 (2002); Leatherman v. Tarrant County Narcotics Intelligence & Coordination  
12 Unit, 507 U.S. 163, 168 (1993).

13 In ruling on a FED. R. CIV. P. 12(b)(6) Motion at the court must accept all  
14 factual allegations pleaded in the complaint as true, and must construe them and  
15 draw all reasonable inferences from them in favor of the nonmoving party. Cahill v.  
16 Liberty Mut. Ins. Co., 80 F.3d 336, 337-38 (9th Cir. 1996); Mier v. Owens, 57 F.3d  
17 747, 750 (9th Cir. 1995).

#### 18 B. UNFAIR COMPETITION LAW STANDARD

19 California's unfair competition law defines "unfair competition" to mean and  
20 include "any unlawful, unfair or fraudulent business act or practice and unfair,  
21 deceptive, untrue or misleading advertising and any act prohibited by [the false  
22 advertising law]." BUS. & PROF. CODE § 17200. The UCL's purpose is to protect  
23 both consumers and competitors by promoting fair competition in commercial  
24 markets for goods and services. Barquis v. Merchants Collection Assn., 7 Cal. 3d  
25 94, 110 (1972).

26 The UCL's scope is broad. Kasky v. Nike, Inc., 27 Cal. 4th 939, 950 (2002).  
27 By defining unfair competition to include any "*unlawful . . . business act or practice*"  
28 (§ 17200 , italics added), the UCL permits violations of other laws to be treated as

1 unfair competition that is independently actionable. Id., citing Cel-Tech  
2 Communications, Inc. v. Los Angeles Cellular Telephone Co., 20 Cal. 4th 163, 180  
3 (1999). By defining unfair competition to include also any "*unfair or fraudulent*  
4 business act or practice" (§ 17200, italics added), the UCL sweeps within its scope  
5 acts and practices not specifically proscribed by any other law. Cel-Tech  
6 Communications, Inc. v. Los Angeles Cellular Telephone Co., supra, at p. 180.) A  
7 private plaintiff may bring a UCL action even when "the conduct alleged to  
8 constitute unfair competition violates a statute for the direct enforcement of which  
9 there is no private right of action." Stop Youth Addiction, Inc. v. Lucky Stores,  
10 Inc., 17 Cal. 4th 553, 565 (1998). To state a claim under the UCL based on false  
11 advertising or promotional practices, "it is necessary only to show that 'members of  
12 the public are likely to be deceived.'" Committee on Children's Television, Inc. v.  
13 General Foods Corp., 35 Cal. 3d at 197, 211 (1983); accord, Bank of the West v.  
14 Superior Court, 2 Cal. 4th 1254, 1267 (1992).

15  
16 **C. ENOM'S STATEMENTS ARE MISLEADING AND TARGETED TO ORDINARY CONSUMERS**

17 eNom argues that the relevant question for this Court is whether its  
18 statements could mislead "sophisticated purchaser[s]." (Motion at 2:25-27 (citing  
19 Arizona Cartridge Remanufacturers Assoc., Inc. v. Lexmark Int'l, Inc., 290  
20 F.Supp.2d 1034, 1041 (N.D.Cal. 2003).) However, it is clear that eNom's  
21 statements are targeted to retail consumers, and that the appropriate inquiry is  
22 whether those consumers are confused by eNom's representations.

23 eNom has omitted critical information from the website screenshots attached  
24 as Exhibit A to its Motion (the "eNom Exhibit"). Accordingly, Plaintiffs have  
25 completed the job by attaching **other** relevant portions of eNom's website to this  
26  
27  
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1 memorandum as Exhibit A (“Plaintiffs’ Exhibit”).<sup>4</sup>

2 The first page of Plaintiffs’ Exhibit (the “Home Page”) indicates what  
3 consumers see when they first enter eNom’s website. A button marked “First Dibs”  
4 is prominent on the right side of that page. When a viewer clicks on it, she is taken  
5 to page three of Plaintiffs’ Exhibit (the “First Dibs Page”), with the heading “Get  
6 First Dibs on ANY .com or .net domain name!” The phrase “Get the domain name  
7 you want” appears in bold text beneath this heading, along with the slogan “If you  
8 were given the opportunity to have ANY domain name, which name would you  
9 choose?” (Plaintiffs’ Ex., pp. 3-5.) Nowhere on the First Dibs Page does eNom  
10 state that pre-orders are available only to eNom Technology Partners (“ETPs”). In  
11 fact, the First Dibs Page apparently allows anyone to pre-order First Dibs  
12 subscriptions, and invites them to do so by clicking on either of two bold headings  
13 titled “Enter the First Dibs Pre-Order Queue”. The First Dibs Page states that the  
14 queue is “now open”, and that subscribers may “add as many First Dibs for as many  
15 names as [they] wish.”

16 When the viewer clicks on the heading “Enter the First Dibs Pre-Order  
17 Queue,” she is taken to page six of Plaintiffs’ Exhibit (the “Bidding Details Page”).  
18 That page reiterates that “[t]he queue is open to retail customers”. (Plaintiffs’ Ex.,  
19 p. 6.) Again, the Bidding Details Page specifically informs ordinary consumers that  
20 they may purchase First Dibs subscriptions, and does not reserve that privilege for  
21 ETPs, or even mention ETPs.<sup>5</sup>

22 eNom’s Terms and Conditions for the First Dibs Service include the  
23 following statement: “During the pre-order period, only, [ETPs] may sign up to  
24

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25 <sup>4</sup> Exhibit A is comprised of true and correct copies of screenshots from eNom’s website. eNom  
26 has already cited authority for referring to such materials in a 12(b)(6) Motion at *i.e.*, Shwarz v. United  
27 States, 234 F.3d 428, 435 (9<sup>th</sup> Cir. 2000)(the court “may consider documents that are referred to in the  
28 complaint whose authenticity no party questions”).

<sup>5</sup> Moreover, since eNom’s First Dibs web pages fail to specify what an “eNom Technology  
Partner” is, an ordinary consumer might be forgiven for assuming that she is one.

1 participate in the First Dibs pre-order process.” (eNom Ex., p. 1.) The placement  
2 of the first comma implies that ETPs may sign up only during the pre-order period,  
3 not that only ETPs may sign up during the pre-order period. Regardless, this is  
4 irrelevant since the Bidding Details Page states that the queue is now open to  
5 everyone.

6 Viewed in the clear light of its own website, eNom’s claim that it offers the  
7 First Dibs service to “an audience of sophisticated consumers” (Motion at 2:8-10) is  
8 disingenuous. Its citation of Arizona Cartridge, *supra* is deceptive, as well as  
9 inapplicable (“[w]here the practice is targeted to a sophisticated purchaser, ‘the  
10 question of whether [a representation] is misleading to the public will be viewed  
11 from the vantage point of members of the targeted group”). And its claim that  
12 “[p]laintiffs disingenuously rely on selectively edited statements...” is ironic.<sup>6</sup>  
13 (Motion at 3:24-26) It is clear that eNom’s statements regarding the First Dibs  
14 service are targeted at ordinary consumers.<sup>7</sup>

15 **D. PLAINTIFFS PROPERLY ALLEGED THAT ENOM’S STATEMENTS ARE**  
16 **MISLEADING TO CONSUMERS**

17 Plaintiffs are not required to prove their claims at this point – they need only  
18 plead them in a manner that gives eNom fair notice of what they are. Conley,  
19 *supra*, 355 U.S. at 47. Plaintiffs have done this. In the FAC, they allege that eNom  
20 is currently taking “pre-orders” for First Dibs, “without disclosing the likelihood  
21 that a subscriber will obtain the domain name to which it subscribes.” (FAC, ¶ 7.6)

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22  
23 <sup>6</sup> eNom misstates the facts again when it claims that Plaintiffs mischaracterize its First Dibs Terms  
24 and Conditions (Motion at 3:17-18) by alleging that eNom will charge customers’ credit cards even if it  
25 does not obtain a WLS subscription for them (Motion at 3:11-13). In reality, the FAC provides that “by  
26 placing an order the customer authorizes eNom to charge his credit card if the subscription sought is  
27 available” (FAC, ¶ 7.8) (emphasis added).

28 <sup>7</sup> eNom’s statements concerning the alleged “sophistication” of ETPs are unsupported by the  
record and should be stricken pursuant to Fed. R. Evid. 802. (Motion at 4:3-6 and 4:26-28) Moreover,  
those statements are irrelevant since, as mentioned, the First Dibs program is targeted to average  
consumers.



1 Phrases on eNom’s website such as “Get the domain name you want” and “If you  
2 were given the opportunity to have ANY domain name, which name would you  
3 choose?” encourage ordinary consumers to believe that they are purchasing  
4 property. (FAC, ¶ 7.9) This is misleading and a violation of CAL. BUS. & PROF.  
5 CODE §17200 *et seq.*

6 In Consumer Advocates v. Echostar Satellite Corp., 113 Cal.App.4th 1351  
7 (Cal.Ct.App. 2003), the defendants represented to consumers that their television  
8 service would allow viewing of a program schedule “up to 7 days in advance,” and  
9 that they would provide fifty (50) channels. Id. at 1353. The court held that there  
10 was a “triable issue of fact” as to whether these representations were “likely to  
11 deceive a reasonable consumer”. Id. at 1361-62.

12 Similarly, eNom’s statements such as “Get the domain name you want” and  
13 suggestions that consumers may “have ANY domain name”, are misleading and  
14 create a triable issue of fact for this Court. Like the defendants in Consumer  
15 Advocates, eNom argues that its statements are not meant to be taken literally, but  
16 Plaintiffs have made a credible argument that consumers might be misled.  
17 Accordingly, this Court should follow the Consumer Advocate court’s reasoning  
18 and hold that:

19 ...we cannot say that there is no triable issue on whether  
20 they were untrue or misleading. Under the False  
21 Advertising Act and the UCL, “A perfectly true statement  
22 couched in such a manner that it is likely to mislead or  
deceive the consumer, such as by failure to disclose other  
relevant information, is actionable.”

23 Id. at 1362 (citing Day v. AT&T Corp., 63 Cal.App.4th 325, 332-33 (Cal.Ct.App.  
24 1998)).

25 This court issued a similar holding in Perfect 10, Inc. v. Cybernet Ventures,  
26 Inc., 167 F.Supp.2d 1114, 1125 (C.D.Cal. 2001) (“Nor are the examples mere  
27 ‘puffery’ . . . It is not a ‘vague, highly subjective claim’ when one attaches ‘You  
28 Gotta Love Jennifer Hewitt Nudes’ to a web link . . . Rather, one could reasonably

1 expect to find Jennifer Love Hewitt nude images on a site with that label”). The  
2 Perfect 10 court held that the plaintiff had “adequately stated the facts” supporting  
3 its unfair competition claim. Id.

4 In the present case, “Get the domain name you want” is even more definite  
5 than the statement the Perfect 10 court held was not puffery. Such a statement  
6 might easily mislead consumers, and in any event creates a triable issue for this  
7 court.

8 The force of eNom’s misleading statements is compounded by its refusal to  
9 provide any clear and accurate information regarding the likelihood that a WLS  
10 subscription will be successful. Shockingly, eNom argues that providing such  
11 information to its customers “would be unhelpful at best, and, in many  
12 circumstances, it would be grossly misleading”. (Motion at 3:20-23) Although it  
13 would not be difficult for eNom to disclose the fact that “most subscriptions will not  
14 result in the actual registration of any domain name,” as Plaintiffs urge (FAC, ¶  
15 7.12), eNom views this as a “complex calculus” (Motion at 7:1).

16 eNom has asked this Court to hold that its representations to consumers are  
17 not misleading under any conceivable set of circumstances. As indicated, however,  
18 eNom’s statements are at least as misleading as the representations in Consumer  
19 Advocates and Perfect 10, *supra*. What “reasonable consumers” understand  
20 eNom’s statements to mean, is a question of fact. Accordingly, this Court should  
21 deny eNom’s Motion and allow Plaintiffs’ Third Cause of Action to remain before  
22 this Court.

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1 **IV. CONCLUSION**

2 Even eNom is confused about what its own website actually says, as  
3 indicated by its assertion that its site clearly distinguishes between what eNom  
4 offers to retail consumers and “ETPs”. As indicated by Plaintiff’s Exhibit A, there  
5 is no clear distinction. Moreover, eNom’s relentlessly upbeat statements about the  
6 possibility of acquiring desired domain names, coupled with its ongoing refusal to  
7 provide any clear information about the actual likelihood of acquiring those names,  
8 is misleading to consumers and actionable under California’s unfair competition  
9 law. Plaintiffs have adequately pleaded an unfair competition law claim against  
10 eNom on behalf of themselves and the general public, and respectfully request that  
11 this Court deny eNom’s motion to dismiss that claim.

12 Dated this 17<sup>th</sup> day of June, 2004.

13  
14 Respectfully Submitted,

15 **NEWMAN & NEWMAN,**  
16 **ATTORNEYS AT LAW, LLP**

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18 By: 

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20 Derek A. Newman (190467)  
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# **EXHIBIT A**

Domain registration and services

home

- overview
- services
- news
- pricing info
- statistics
- maintenance
- about us

- my enom
- domain names
- web hosting NEW
- web monitor NEW
- resellers
- secure my site
- pre-order
- help
- cart
- log-out

 **Rest Assured with WEB MONITOR**  
more...


check a domain name  
WWW .com

GO

**Easy Transfers**  
click here

**Web Hosting**  
storage 250MB 20GB bandwidth \$9.75  
Email boxes 100 SQL optional

## Domain Names

 - ALL INCLUSIVE DOMAIN PACKAGE

- Your Domain Name FREE 10 page website
- FREE 100 email addresses
- FREE Name-my-Phone
- FREE Web/URL forwarding
- FREE DNS services
- FREE Domain Control Panel
- FREE Parking Page
- FREE Name-my-Map
- ... and more...

See your domain prices

>> check a domain name here <<

 - ADD-ON SERVICES

**"Email Pak" of 10 mailboxes - Only \$19.95/yr**  
That's under 17¢ a mailbox per month.

- Access your email anywhere, anytime.
- No ads on your emails
- POP3, SMTP, WebMail supported
- Reseller discounts available

**ID Protect - Only \$8.00/yr per domain**

Protect your domain/WhoIs from:

- Identity Theft
- Spam
- Data mining
- Name Hijackers
- and more...

NEW AT ENOM

get your domain in  
multilingual characters



click here

**New TLDs Available!**

**.US.COM, .EU.COM, and many more...**  
Secure your international presence.




**ID PROTECT**

**Shield your identity!**  
Your WhoIs Info is vulnerable if you don't.



**Pre-Order Queue!**  
Get First Dibs on newly available names.

 [Read all eNom news here](#)

 [Read all Maintenance alerts here](#)



>> more info <<

**OTHER SERVICES**

**eNom Web Hosting - Only \$9.75 per month**

Your complete Shared Hosting Solution.

- 250MB Hosting Storage
- 20GB Data Transfer
- 100 POP Email Accounts
- SQL Database Optional

**First Dibs - Only \$35 per year**  
Includes registration of the domain name.

- Get the Domain Name You Want
- Protect Your Existing Domain Names

>> more info <<

eNom is



**Total Name Registrations: 3,093,209**  
(as of 6/16/2004 11:45:20 AM).

[More statistics...](#)

\$\$\$ - PARTNER WITH ENOM



Become an eNom Technology Partner

**#1 Domain reseller program**

>> more info <<



eNom, Inc. has been accredited by ICANN, the Internet Corporation for Assigned Names and Numbers. Please review our **Terms and Conditions**, **Disclaimer**, **Registration Agreement**, **Privacy Policy**, and **Dispute Policy**. The entirety of this site Copyright © 1998-2004 eNom, Inc. All rights reserved.



**enom**  
Domain registration and services

pre-order

- home
- my enom domain names
- web hosting NEW
- web monitor NEW
- resellers
- secure my site
- pre-order

- overview
- First Dibs
- help
- cart
- log-out

cart Who-Is about us ?

check a domain name .com

GO

Easy Transfers click here

## Get First Dibs™ on ANY .com or .net domain name!

If you were given the opportunity to have ANY domain name, which name would you choose?

### Get the domain name you want

Your domain name is a unique and valuable asset, there is only one like it in the world.

### Protect your existing domain names

Only **\$35/yr.**  
(includes registration)

### Pre-Order Queue Summary:

- **Time Period Offered:** Until the registry begins accepting First Dibs subscription or until further notice.
- You can put First Dibs in the queue with no bid, but if you want to increase your rank in the queue, you must bid at least \$15. The more you bid, the higher your rank in the queue. When the registry begins accepting First Dibs subscriptions, we will submit the queue to the registry in ranked order.
- For every First Dibs in the queue, you commit to pay \$35 plus the bid amount if we are successful in obtaining the First Dibs for you.
- **Pre-Order Queue Rules:** Please read below. By entering First Dibs into the Queue, you agree to the terms and conditions.

### Enter the First Dibs Pre-Order Queue

### Rules for the First Dibs™ Service Queue



We will accept requests for First Dibs subscriptions until just before the registry goes live. When the registry accepts First Dibs subscriptions, we will try to obtain the First Dibs subscription for the names you have in the queue, by requesting them from the registry.

This queue has a bidding system in place, whereby you will be able to place a bid on each First Dibs. You do not have to bid on any First Dibs if you do not want to. If you do not bid on the First Dibs, it will be placed in the queue with the lowest rank (at the \$35 level). If you decide to bid, the bid amount must be \$15 or more (the minimum bid is \$15), and the First Dibs will be placed in the queue at that rank. For example, if you bid \$20, the First Dibs is placed in the queue at the \$55 rank (\$55 = \$35 + \$20). The bid system will act as a tie-breaker for high demand names. By placing First Dibs in the queue you are committing to pay \$35 plus the bid amount if we obtain the First Dibs for you. If you do not wish to place a bid, please leave the Bid Amount at \$0.

**How it works:** When the queue opens (it is now open), you will be able to add as many First Dibs for as many names as you wish and you can view a list of your requested First Dibs and their associated names. When the registry goes live we will attempt to submit the queue to the registry in ranked order.

If you have a retail account, and approximately 2 days before we submit the queue to the registry, your credit card will be pre-authorized for your full bid amount plus the First Dibs subscription price for the First Dibs you have in the queue. If you are a reseller, your available balance will be deducted just before we submit the queue, unless you have made special arrangements in advance. We will not attempt to obtain the First Dibs for you if you do not have the available funds either on your credit card or in your account and your First Dibs will be removed from the queue. Once we obtain the First Dibs for you, and only if we obtain the First Dibs for you, you will be charged the First Dibs price plus the bid amount, if any, for each First Dibs we obtain for you. The First Dibs is not yours until we have collected these fees from you.

Please be aware that your account or credit card will have that amount reserved for the duration of the First Dibs being in the queue.

This queue is not on a first-come-first-serve basis, though it is likely that the registry's acceptance of First Dibs will be. So if you put a First Dibs for a name in the queue and someone else asks for a First Dibs associated with that same name, the person with the highest bid will be awarded the name (as long as all other processes such as charges resolve properly), and assuming we get the name, and no matter what actual order we submit the queue in.

**Important notes:**

- If you have a retail account, make sure you can have the balance of your pre-orders reserved on your credit card.
- If you have a reseller account, make sure you have enough in your account, or make special arrangements with eNom.
- Bids for First Dibs over \$25 cannot be removed.
- "Requesting" a First Dibs subscription is not a guarantee that the First Dibs subscription will be registered and awarded to you. Other customers from different Registrars might have a request for the same First Dibs subscription. eNom will make a best attempt to register the First Dibs subscriptions in the ranked order, however, we cannot guarantee that any of the First Dibs for any of the names will actually be obtained, and if obtained, actually awarded to you.
- Make sure to read the [First Dibs Terms and Conditions](#) and the [First Dibs FAQ](#).
- Please come back to this page often as some details may change.

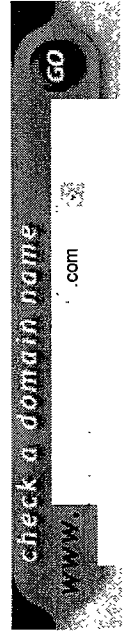
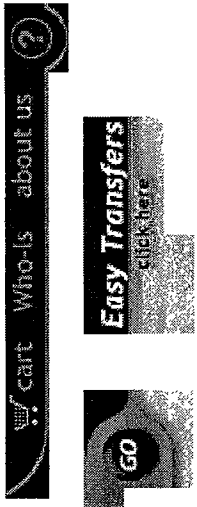
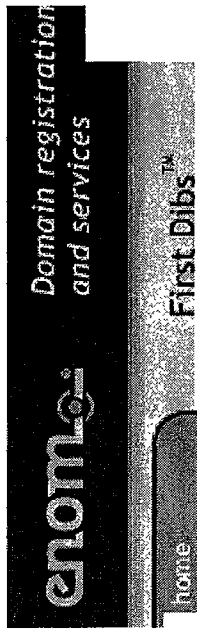


Enter the First Dibs Pre-Order Queue



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## First Dibs™ Queue Bidding Details

We have a bidding process to help you get those highly sought after First Dibs. Please read the information below for details.

The bid process will act as a tie-breaker for First Dibs associated with high demand names. Once you have submitted your First Dibs, a list will appear with the option to place bids on each one. You do not have to place a bid if you do not want to. Your First Dibs will still be in the queue, even if you do not place a bid on it.

### How does the bidding process work?

First Dibs subscriptions requested by more than one user are awarded by bid. You may place a bid over and above your regular First Dibs subscription price to try to secure the subscription. If two or more users request a subscription for the same domain, but no one bids above their regular subscription price, the subscription is awarded to the first customer who entered the First Dibs into the queue.

### Is this a blind bidding process?

No, We will publish the highest current bid any user has on a First Dibs for that name. You must bid over that amount in order for the Dib to be awarded to you. If the high bidder does not pay the required fee, you may be awarded the First Dibs if you are the next lowest bidder.

### How much can I bid?

You may bid as few as \$15 or as many as \$10,000. All bids are in addition to your regular First Dibs subscription fee, regardless of whether or not you are the only bidder. If you do not wish to place a bid, please leave the Bid Amount at \$0.

### Is the queue open to retail customers as well as resellers?

Yes. The queue is open to retail customers and resellers.

### What if I win a bid and do not have enough funds in my reseller account to cover the cost?

Then the First Dibs will be removed from the queue entirely (if you were the only person to submit a First Dibs for the name), or if the First Dibs is obtained, you

### How do I pay for my First Dibs subscriptions?

If you have a retail account, approximately 2 days before the queue is submitted to the registry, your credit card will be pre-authorized for your full bid amount plus the First Dibs subscription price of the domain names you have in the queue. If you are a reseller, your available balance will be deducted before we submit the queue as well. When we know which First Dibs have been actually obtained at the registry, you will be charged for all successful subscriptions at that time. Please be aware that your account or credit card will have that amount reserved from the time we "pre-authorize" the funds for the duration of the First Dibs being in the queue.



**What if several users don't bid on a name and leave the bid amount \$0?**

All requests are time-stamped. The user with the earliest request will be awarded the name.

**Can bids over \$25 be withdrawn/deleted?**

No, please don't bid over \$25 if you don't intend on getting that name and having your account debited the amount you bid.

**Am I guaranteed to get a First Dibs subscription on every domain on my list?**

No. The demand for some domains is very intense.

will not be awarded the First Dibs and it will go to the next lower bidder.

**Will I increase my odds for getting a First Dibs on a domain name if I submit it from multiple accounts?**

No. You can submit as many First Dibs as you wish from one account.

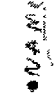
**Make sure to read the following:**

**Rules for the First Dibs Queue**

**First Dibs Terms and Conditions**

**First Dibs FAQ**

By clicking the "I Agree" button below, you agree to the [First Dibs Terms and Conditions](#)



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1 **PROOF OF SERVICE**

2  
3 I hereby certify that on this 17<sup>th</sup> day of June, 2004, I served the foregoing document described  
4 as:

5 **-PLAINTIFFS' OPPOSITION TO MOTION TO DISMISS FIRST AMENDED COMPLAINT BY**  
6 **DEFENDANT ENOM, INC. and**  
7 **-PROOF OF SERVICE**

8 to be served on all interested parties in this action by transmitting a true copy thereof by Email, and by  
9 Federal Express addressed as follows:

10 Laurence J. Hutt, Esq.  
11 Arnold & Porter LLP  
12 1900 Avenue of the Stars, 17<sup>th</sup> Floor  
13 Los Angeles, CA 90067- 4408

14 Email: [Laurence\\_Hutt@aporter.com](mailto:Laurence_Hutt@aporter.com)

15 Jeffrey A. LeVee, Esq.  
16 Jones Day  
17 555 West Fifth Street, Suite 4600  
18 Los Angeles, CA 90013 - 1025

19 Email: [jleee@jonesday.com](mailto:jleee@jonesday.com)

20 Frederick F. Mumm, Esq.  
21 Davis Wright Tremaine LLP  
22 865 S. Figueroa Street, Suite 2400  
23 Los Angeles, CA 90017 - 2566

24 Email: [fredmumm@dwt.com](mailto:fredmumm@dwt.com)

25 I declare that I am employed in the office of a member of the bar of this court at whose direction  
26 the service was made.

27 Executed on June 17<sup>th</sup> , 2004 at Seattle, Washington.

28 *Diana Au*

\_\_\_\_\_  
Diana Au