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7 Attorneys for Defendant
8 eNOM, INC., a Nevada Corporation,
9 erroneously sued as eNOM, Inc., a Washington
10 Corporation and eNOM FOREIGN HOLDINGS
11 CORPORATION, a Washington Corporation

11 UNITED STATES DISTRICT COURT
12 CENTRAL DISTRICT OF CALIFORNIA

13
14 REGISTERSITE.COM, an Assumed Name
15 of ABR PRODUCTS INC., a New York
16 Corporation; et al.,

16 Plaintiffs,

17 vs.

18 INTERNET CORPORATION FOR
19 ASSIGNED NAMES AND NUMBERS, a
20 California corporation; VERISIGN, INC., a
21 Delaware Corporation; NETWORK
22 SOLUTIONS, INC., a Delaware
23 Corporation; ENOM, INC., a Washington
24 Corporation; ENOM FOREIGN HOLDINGS
25 CORPORATION, a Washington
26 Corporation; and DOES 1-10, inclusive,

27 Defendants.

) Case No. **CV04-1368 ABC (CWx)**

) **REPLY IN SUPPORT OF**
) **MOTION TO DISMISS FIRST**
) **AMENDED COMPLAINT BY**
) **DEFENDANT ENOM, INC.**

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **1. INTRODUCTION**

3 Plaintiffs have filed a separate opposition to eNom’s motion to dismiss only
4 with respect to the Third Claim for Relief. This reply memorandum addresses only
5 those arguments made in the separate opposition.¹ eNom incorporates by reference
6 the reply memorandum filed by VeriSign and NSI with respect to the First, Second,
7 Fifth, Sixth, Seventh, Eighth and Ninth Claims for Relief.

8 Plaintiffs’ separate opposition is based entirely on two statements from
9 eNom’s website description of its Wait List Service (“WLS”), named FIRST DIBS.
10 These statements, which appear in the context of a clear and accurate description of
11 the FIRST DIBS service, are classic examples of “puffery.” By definition, puffery is
12 not actionable because no reasonable consumer would take it literally. Nonetheless,
13 Plaintiffs take eNom’s statements wildly out of context and ascribe to them an overly
14 strained interpretation that no reasonable consumer would adopt. Specifically,
15 Plaintiffs’ opposition contends that the statements “Get the domain name you want”
16 and “If you were given the opportunity to have any domain name, which name would
17 you choose?” will lead customers to believe they have a higher chance of obtaining a
18 desired domain name than they actually have.

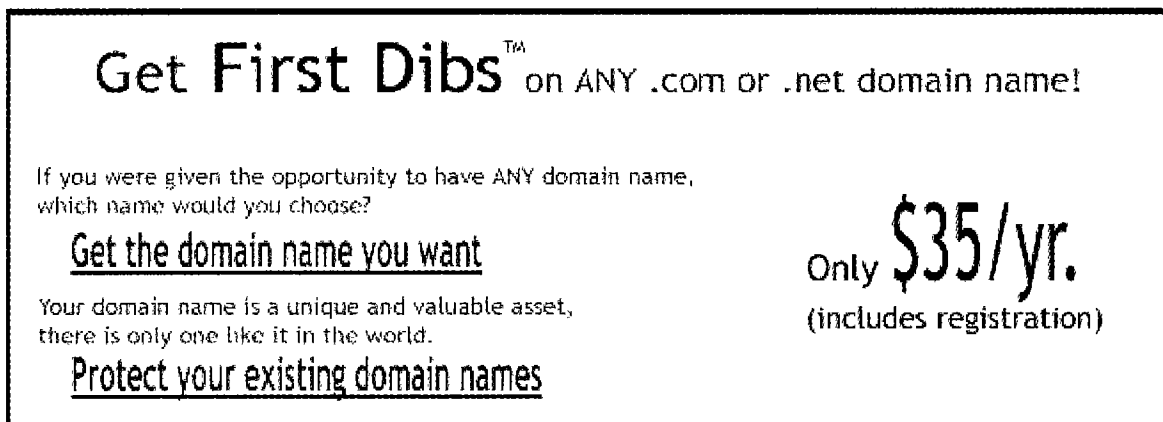
19 In fact, eNom’s website clearly states that the FIRST DIBS service merely
20 enables a customer to be first in line for a currently registered domain name in the
21 event that the current owner fails to renew the registration. eNom does not promise –
22 nor could it – that the current owner will not renew the registration. Nor does it
23 make any false representations about the likelihood of the domain name becoming
24 available. Rather, eNom leaves it to the customer to determine if a \$35 right to be
25

26 _____
27 ¹ eNom incorporated by reference the arguments of VeriSign and Network
28 Solutions, Inc. (“NSI”) in support of its motion to dismiss the First, Second, Fifth,
Sixth, Seventh, Eighth and Ninth Claims for Relief. Plaintiffs similarly incorporated
their opposition to the motion to dismiss such claims filed by VeriSign and NSI.

1 first in line is a good value. Regardless of whether Plaintiffs believe the customer's
2 decision is a wise one, they cannot point to any statement by eNom that, when placed
3 in its proper context, misrepresents the terms of the FIRST DIBS service.

4 **2. ENOM'S STATEMENTS MUST BE CONSIDERED IN THE CONTEXT**
5 **IN WHICH THEY APPEAR ON ENOM'S WEBSITE.**

6 To support their allegations that eNom is misleading potential customers of the
7 FIRST DIBS service, Plaintiffs ignore the context in which eNom's statements
8 appear. Essentially, Plaintiffs complain about the following section from eNom's
9 website:²



The screenshot shows a promotional banner for eNom's 'First Dibs' service. The text reads: 'Get First Dibs™ on ANY .com or .net domain name!'. Below this, it asks 'If you were given the opportunity to have ANY domain name, which name would you choose?'. There are two main call-to-action buttons: 'Get the domain name you want' and 'Protect your existing domain names'. To the right, it states 'Only \$35/yr. (includes registration)'. The entire advertisement is enclosed in a black rectangular border.

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17 To the casual visitor to the eNom website, this section is accessible only if the
18 visitor clicks³ on the "preorder" icon⁴ on the left side of the home page. The page
19 that appears upon clicking "Get the domain name you want" contains the following
20 disclosures:

21
22 ² Plaintiffs concede that it is proper for the Court to consider as exhibits the
web pages on which the alleged misrepresentations appear. (Op. Br. at p. 5 n.4.)

23
24 ³ This click will take the customer to the web page addressed
www.enom.com/tlds, where the above section appears. (A copy of this page is
25 attached to this reply brief as Exhibit D.) If the visitor clicks on the "Get the domain
name you want" icon, he will be taken to another page, which explains the basic
26 FIRST DIBS program. (A copy of this page, addressed
www.enom.com/help/faq_dibs.asp, is attached to this reply brief as Exhibit E.)

27
28 ⁴ A copy of the eNom homepage, www.enom.com, is attached to this reply
brief as Exhibit C. Plaintiffs' Exhibit A, attached to their opposition memorandum,
contains a home page that is only accessible to customers who have a retail account
with eNom.

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

3 With eNom's First Dibs service, you can back-order ANY .COM or
4 .NET domain name, even if it is currently registered by someone else.
5 We monitor the status of your desired domain name 24 hours a day, 365
6 days a year and if the domain becomes available, since you have First
7 Dibs, you become the registered owner of the domain name. It's that
8 simple.

9 (Ex. E.) Further down the same page, the service is described in the "FIRST DIBS
10 Service Frequently Asked Questions." The third question asks:

11 **If I have First Dibs on a domain name, will I be certain to obtain the
12 domain name when the current registration expires?**

13 No. With an active First Dibs subscription you are first in line at the
14 registry for the associated domain name if it expires and becomes
15 available. However, if the current registrant elects to renew or redeem
16 the domain name during the redemption grace period, eNom will be
17 unable to register the domain name for you. If the registrant elects not to
18 continue their registration, then the domain name is automatically
19 registered to you, because you've got First Dibs.

20 (*Id.*)

21 Plaintiffs fail to mention these other statements, focusing solely on the "Get
22 the domain name you want" icon and the question that appears above it, which
23 playfully wonders "If you were given the opportunity to have ANY domain name,
24 which name would you choose?" But in determining whether eNom has made false
25 representations about its FIRST DIBS service, the Court must consider the context in
26 which these statements appear. *See Haskell v. Time, Inc.*, 857 F. Supp. 1392, 1399-
27 1400 (E.D. Cal. 1994). When viewed in context, there is nothing misleading about
28 any of the statements contained on eNom's website.

3. **NO REASONABLE CONSUMER WOULD INTERPRET ENOM'S
STATEMENTS AS SUGGESTING THAT A FIRST DIBS
SUBSCRIPTION WILL AUTOMATICALLY RESULT IN THE
REGISTRATION OF THE DESIRED DOMAIN NAME.**

Remarkably, Plaintiffs contend that eNom's statements imply that a
subscription to FIRST DIBS will guarantee the customer an opportunity to register
any domain name he wants. They base this allegation on an overly strained

1 interpretation of the phrases “Get the domain name you want” and “If you were
2 given the opportunity to have ANY domain name, which name would you choose?”
3 (Op. Br. at p. 7 ln. 1-2.) Neither of these statements can be interpreted as a guarantee
4 of anything. Moreover, both of these statements are devoid of factual content and
5 amount to nonactionable puffery. *See Cooke, Perkiss & Liehe, Inc. v. Northern*
6 *California Collection Serv. Inc.*, 911 F.2d 242, 246 (9th Cir. 1990) (per curiam)
7 (recognizing that nonactionable puffery includes claims that “are so exaggerated as to
8 preclude reliance by consumers).⁵ No reasonable consumer would believe that the
9 FIRST DIBS program will allow him to obtain ANY domain name he wants. For
10 example, it takes only a modicum of common sense to figure out that a \$35
11 subscription to FIRST DIBS will not automatically yield ownership in a high profile
12 domain name such as www.microsoft.com.⁶

13 Plaintiffs’ reliance on this Court’s decision in *Perfect 10, Inc. v. Cybernet*
14 *Ventures, Inc.*, 167 F. Supp. 2d 1114, 1125 (C.D. Cal. 2001) is misplaced. That case
15 involved a misleading advertisement for an adult website that stated “You Gotta
16 Love Jennifer Love Hewitt Nudes.” *Id.* The Court concluded that this statement was
17 not mere puffery, as a reasonable consumer might expect to find nude shots of the
18 popular actress at that link. *Id.* By contrast, no reasonable consumer would construe
19 the statements on the eNom website as anything other than puffery.

20 Similarly, Plaintiffs’ reliance on *Consumer Advocates v. Echostar Satellite*
21 *Corp.* 113 Cal. App. 4th 1351, 1360-62 (2003) also is misplaced. The *Consumer*

23 ⁵ It is clear that “[w]hether the alleged misrepresentations amount to mere
24 puffery may be determined on a motion to dismiss.” *Haskell*, 857 F. Supp. at 1399.

25 ⁶ In describing the preorder program, eNom’s motion to dismiss stated that the
26 FIRST DIBS preorder program was limited to eNom Technology Partners (“ETPs”).
27 ETPs are commercial domain name resellers. Further investigation has revealed,
28 however, that some retail customers were mistakenly permitted to place preorders.
Of course, under the preorder program no payment is made until and unless the
preorder results in an actual Wait List subscription; as a result, no preorder customers
have been charged. eNom has since taken action to ensure that the preorder service
remains limited to ETPs.

1 *Advocates* court considered several allegedly misleading statements, but held that
2 only two were actionable. Specifically, it concluded that detailed, concrete
3 representations that the defendant's satellite service provided 50 channels and
4 showed the program schedule 7 days in advance were sufficiently factual to mislead
5 the public. *Id.* at 1361-62. Yet the court refused to impose liability for statements
6 that the service provided "crystal clear" video and "CD quality" audio, as these
7 statements would not be reasonably understood as a literal promise of perfection. *Id.*
8 at 1361. Clearly, eNom's representations are much closer to these latter statements
9 than to the specific and believable statements about the number of channels or days
10 of advance programming schedule.

11 Even assuming that the above statements, considered in isolation, could be
12 reasonably interpreted as a promise that a FIRST DIBS subscription will result in
13 ownership of any chosen domain name, eNom's other statements leave no doubt on
14 the issue. As noted above, if a potential customer clicks on the "Get the domain
15 name you want" icon, he is taken to a page that clearly explains the terms of the
16 FIRST DIBS program. This page states that with a FIRST DIBS subscription, the
17 customer will become the registered owner of the domain name only "*if* the domain
18 becomes available," *i.e.*, if it is not re-registered by the current owner. (Ex. E
19 (emphasis added).) In addition, the third "Frequently Asked Question" inquires:

20 If I have FIRST DIBS on a domain name, will I be certain to obtain the
21 domain name when the current registration expires?

22 The clear and obvious answer provided by eNom is:

23 No. With an active First Dibs subscription you are first in line at the
24 registry for the associated domain name if it expires and becomes
25 available. However, if the current registrant elects to renew or redeem
26 the domain name during the redemption grace period, eNom will be
27 unable to register the domain name for you.

28 Given these statements, Plaintiffs' contention that reasonable consumers will
be tricked into believing that they are purchasing the domain name itself, rather than
just the right to be first in line in case the domain name is not renewed, is patently

1 | disingenuous. In fact, eNom's statements about its FIRST DIBS service closely
2 | resemble the advertisements found unobjectionable by the *Haskell* court. In that
3 | case, the plaintiffs alleged that statements by a sweepstakes program such as "You've
4 | never been closer to having a chance to win \$5,000,000.00" were deceptive. *See*
5 | *Haskell*, 857 F. Supp. at 1399-1400. The court disagreed, finding that these
6 | representations were mere puffery, especially in light of the fact that the sweepstakes
7 | program was clearly explained in other prominent statements. *Id.* at 1400. Similarly,
8 | eNom's statements – at worst nonactionable puffery – appear with other statements
9 | that leave no doubt about what FIRST DIBS customers are purchasing with their
10 | \$35.

11 | **4. PLAINTIFFS' PROPOSED "CLARIFICATION" WOULD**
12 | **NEEDLESSLY CREATE CONSUMER CONFUSION.**

13 | In the First Amended Complaint, Plaintiffs improbably suggested that eNom
14 | should be required to "disclose the likelihood that a WLS subscription will be
15 | successful[.]" (FAC ¶ 7.11.) In its motion to dismiss, eNom pointed out that such a
16 | disclaimer would be counterproductive and misleading. (Motion at p. 6-7.) With
17 | more than thirty million top level domain names, the chance that a current owner will
18 | fail to renew registration on any given domain name is impossible to know. Some
19 | high profile domain names, like www.microsoft.com, will almost certainly be
20 | renewed on time. But a recently registered, obscure name is much more likely to
21 | become available.

22 | In their opposition to eNom's motion to dismiss, Plaintiffs back off their ill
23 | considered proposal. They now focus on their suggestion that eNom should state
24 | simply that "most subscriptions will not result in the actual registration of any
25 | domain name." (Op. Br. at p. 8 ln. 13-14.) But this proposed disclosure is
26 | unnecessary. First, eNom never claims that a FIRST DIBS subscription is likely to
27 | result in the actual registration of a domain name. In fact, its website statements
28 | make clear that whether a subscription will result in actual registration depends

1 entirely on the actions of the current owner. (Ex. E.) Second, even if Plaintiffs'
2 proposed disclaimer is true – an untested hypothesis at best – it would be of little
3 help. After all, a potential FIRST DIBS customer is concerned not with whether
4 WLS subscriptions are *generally* successful, but whether the particular domain name
5 he wants is likely to become available. The customer already has the tools to make
6 that judgment. In addition to using his common sense, the customer can check the
7 publicly available WHOIS directory, which provides sufficient and timely data about
8 the registration. Thus, there is no need for Plaintiffs' proposed disclaimer.

9 **5. CONCLUSION**

10 Plaintiffs' Third Claim for Relief is fatally flawed, as it is based on statements
11 that are nothing more than hyperbolic puffery. Furthermore, Plaintiffs conveniently
12 ignore the clear and accurate description of the FIRST DIBS program that is featured
13 prominently on eNom's website. In fact, no reasonable consumer could be deceived
14 by any of the statements on eNom's website. As a result, Plaintiffs' Third Claim for
15 Relief must be dismissed.

16
17 DATED: June 30, 2004

18 DAVIS WRIGHT TREMAINE LLP
19 FREDERICK F. MUMM
20 MARC A. FULLER

21 By: 

22 Frederick F. Mumm

23 Attorneys for Defendant
24 eNOM, INC., a Nevada Corporation,
25 erroneously sued as eNOM, Inc., a
26 Washington Corporation and eNOM
27 FOREIGN HOLDINGS CORPORATION,
28 a Washington Corporation

Domain registration and services

Check a domain name

www

GO

Easy Transfers click here

cart Who-Is about us

home

overview

services

news

pricing info

statistics

maintenance

about us

my enom

domain names

web hosting

web monitor

resellers

secure my site

pre-order

help

new account

log-in



Domain Names

ALL INCLUSIVE DOMAIN PACKAGE \$29.95 per year

That's less than \$2.50/month for a domain name, website, email addresses...

- 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...

>> 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

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

Reseller Solutions

\$\$\$- PARTNER WITH ENOM



Become an eNom Technology Partner

#1 Domain reseller program

- More resellers are registering more names with eNom than any other program. Why? Find out more...
- eNom offers a suite of tools and services to make your sales soar. Choose the eNom API (quickly becoming an industry standard) Or try the easy to set up PDP Or RegistryRocket Find out more...
- eNom partners get the lowest prices, more products, and better services to succeed in this highly lucrative market. Find out more...

>> more info <<



International Domain Names




ID Protect - Only \$8.00/yr per domain

Protect your domain/whols from:

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

[>> more info <<](#)

**Email us: sales@enom.com
or Call 425.274.4500 Ext. 2**

 **- 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 <<](#)



Total Name Registrations: 3,109,325

(as of 6/23/2004 11:48:50 AM).

[More statistics...](#)



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The screenshot shows the eNom website interface. At the top, there is a navigation menu with links for 'home', 'my enom', 'domain names', 'web hosting', 'web monitor', 'resellers', 'secure my site', 'discuss', 'overview', 'First Dibs', 'help', 'new account', and 'log-in'. Below the navigation is a banner for 'Domain registration and services' with a 'pre-order' button. The main content area features the text 'Get First Dibs™ on ANY .com or .net domain name!' and 'If you were given the opportunity to have ANY domain name, which name would you choose?'. A large graphic displays 'Only \$35/yr. (includes registration)'. Below this is a 'Pre-Order Queue Summary' section with a list of terms. At the bottom of the screenshot, there are links for 'Check a domain name', 'GO', 'Easy Transfers', 'cart', 'Who-Is', 'about us', and a help icon.

enom

Domain registration and services

pre-order

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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Domain registration and services

FAQ - First Dibs™

Check a domain name
www . com

GO

Easy Transfers
click here

cart Who-Is about us



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

- support center
- web hosting
- web monitor
- TLD overview
- abuse policy
- privacy policy
- terms
- dns demo
- password help
- new account
- log-in



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)

With First Dibs™ You Can Get the Domain Name You Want

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

With eNom's First Dibs service, you can back-order ANY .COM or .NET domain name, even if it is currently registered by someone else. We monitor the status of your desired domain name 24 hours a day, 365 days a year and if the domain becomes available, since you have First Dibs, you become the registered owner of the domain name. It's that simple.

Did you know that over 20,000 previously registered .COM or .NET names expire and are deleted each day?

It's true. These are names that were once owned by someone else and may already have valuable traffic associated with them. Now, with the help of First Dibs, you can have the domain name you've always wanted the instant it becomes available again.

Don't spend another minute watching and waiting for your first choice domain name. Get First Dibs on the domain name that you have always wanted.

How do I get First Dibs on the domain name I want?

It's simple. Just subscribe for your desired domain name under eNom's First Dibs service. Once you have First Dibs, we will automatically register the name for you if it becomes available.

Benefits of First Dibs:

1. First Dibs reserves your spot at the front of the line at the registry. With First Dibs you will acquire the domain name when it expires and becomes available for registration.
2. As a First Dibs subscription holder, you will be the registered owner of your desired domain name if it is deleted or becomes available during your subscription period.
3. Just \$35/yr. maintains your First Dibs subscription to any .COM or .NET domain name. You can change the domain name associated with your subscription a total of (3) times during a 12-month subscription, subject to First Dibs availability. This is particularly important, should the existing registrant decide to renew the domain name during your subscription period. As long as you maintain your subscription, your place at the front of the line for the associated domain is secure.

[First Dibs Pre-Order Queue](#)

[First Dibs FAQ](#)

[First Dibs Terms and Conditions](#)

With First Dibs™ You Can Protect Your Existing Domain Names

eNom's First Dibs service enables you to securely protect your valuable domain names.

A domain name is a unique and valuable asset: there is only one like it in the world. A domain name provides a gateway where people from all around the world can stay connected with you and your business. Now with First Dibs you can protect this valuable asset. First Dibs will provide protection in the event your domain name unintentionally expires, by putting you at the front of the line at the registry should it inadvertently become available.

A domain name can unintentionally expire for the following reasons:

1. Renewal email notices sent to an employee that no longer works for the company but is still listed as the contact for

- the domain name.
- 2. The credit card on file for the domain account has expired.
- 3. You recently changed your address, phone number or email address, and forgot to update your WHOIS information.
- 4. The accounting department missed the bill.

Benefits of protecting your domain name with First Dibs:

- 1. First Dibs insures that you and only you will remain the owner of your domain name should it expire.
- 2. There is absolutely no risk. First Dibs simply provides a layer of insurance on your domain name, in the event that it should expire unintentionally.
- 3. First Dibs saves you or your IT department from having to constantly monitor the status of your domain names.

Don't leave it up to chance. Your domain name is an asset. Now you can protect it.

[First Dibs Pre-Order Queue](#)

[First Dibs FAQ](#)

[First Dibs Terms and Conditions](#)

The First Dibs™ Service Frequently Asked Questions

Exhibit E-3

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[What TLD's are available for First Dibs?](#)

[How much does it cost to get First Dibs subscription?](#)

[If I have First Dibs on a domain name, will I be certain to obtain the domain name when the current registration expires?](#)

[What happens if the domain name that I want is renewed by the current registrant?](#)

[At what point does a domain name become available for registration?](#)

[Will the current registrant know that I have placed First Dibs on their domain name?](#)

[Do you offer refunds?](#)

[What if I don't want someone to know that I am interested in getting their domain name once it expires?](#)

What TLD's are available for First Dibs?

Currently, .COM and .NET are available for First Dibs.

How much does it cost to get a First Dibs subscription?

The cost for a one-year subscription to First Dibs is \$35. This includes registration of the domain name, should you acquire the domain name.

If I have First Dibs on a domain name, will I be certain to obtain the domain name when the current registration expires?

No. With an active First Dibs subscription you are first in line at the registry for the associated domain name if it expires and becomes available. However, if the current registrant elects to renew or redeem the domain name during the redemption grace period, eNom will be unable to register the domain name for you. If the registrant elects not to continue their registration, then the domain name is automatically registered to you, because you've got First Dibs.

What happens if the domain name that I want is renewed by the current registrant?

If the current registrant decides to continue their domain name registration, you can select to have eNom monitor another domain name for you. You can identify another domain name up to 3 times during a single subscription or you can elect to auto-renew your 12 month subscription to the same domain name.

At what point does a domain name become available for registration?

If an active (registered) domain name is not renewed within the period that follows its expiration date, the Registry sets the domain status to Pending Delete and it will be made available to the general public for re-registration after 5 days.

Will the current registrant know that I have placed First Dibs on their domain name?

Yes, the existing registrant will be notified that First Dibs has been placed on the domain name.

Do you offer refunds?

While we do not offer refunds, you can apply your subscription to a different domain name that you would like us to monitor and attempt to register for you. You can change your subscription to apply to a different domain name up to (3) times during your 12 month subscription.

What if I don't want someone to know that I am interested in getting their domain name once it expires?

With **ID Protect**, you can get First Dibs on a domain name while remaining anonymous. All your personal information,

(name, phone number, email and home address) is protected from public exposure and the WHOIS directory.

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[First Dibs Terms and Conditions](#)



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