



Kaplitt Legal Consulting

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June 17, 2013

VIA EMAIL ONLY

Richard D. Trenk, Esq.
Township Attorney for the Township of West Orange
Trenk DiPasquale
347 Mount Pleasant Avenue
Suite 300
West Orange, New Jersey 07052

Dear Mr. Trenk:

I am pro bono counsel to Jake Freivald and write in response to your "cease and desist letter," dated May 13, 2013, regarding his domain westorange.info. Obviously it was sent in jest, and the world can certainly use more legal satire. Bravo, Mr. Trenk!

Not that we didn't get the joke ... but since Mr. Freivald had not previously encountered a humorous lawyer, he actually thought your letter may have been a serious effort by the Township to protect its legitimate interests. Rest assured, I've at least convinced him that it was certainly not some impulsive, ham-fisted attempt to bully a local resident solely because of his well-known political views. After all, as lawyers you and I both know that would be flagrantly unconstitutional and would also, in the words of my 4-year old, make you a big meanie.

Nonetheless, to further allay my client's concerns, will you kindly forward to me copies of the prank cease and desist letters you have no doubt also sent to the owners of the following domains:

- westorangeinfo.com (don't tell me you overlooked this one ... ?)
westorange.patch.com
westorangenj.net (now that sounds like a Township website!)
westorangehistory.com

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- westorangetax.com
westorangenurseries.com
westorangeins.com
westorangebassangers.com (my personal favorite)
westorangephoto.com
westorangeparade.com
westorangenephrology.com
westorangeplumber.com
westorangerotary.org
westorangemassagetherapy.com (hopefully not a euphemism, suggest you investigate)

Oh, and just to play along, bad you intended for your letter to be taken seriously, even in some small measure, we would have sent in response something along the following lines:

* * *

Dear Mr. Trenk:

1) The suggestion that Mr. Freivald's website is "likely to cause confusion" or "falsely create the impression" of association with the Township is farcical. As is evident from the attached home page snapshots, the Township's website is a "virtual" masterpiece developed by Icon Enterprises, Inc., d/b/a CivicPlus, at a cost to West Orange taxpayers of \$35,000 (plus \$5,000 per annum for hosting and maintenance). By contrast, my client's rudimentary website (cost: \$3.17,¹ free hosting) is so minimalist that it arguably qualifies as modern art.

2) To date, all ICANN rulings in this area have held that geographic domain names, by themselves, are not protected marks - especially when claimed by government or municipal authorities.²

3) I can't believe I really have to explain this, but here goes ... after nearly a century of First Amendment jurisprudence, it is well-settled that content-based restrictions on free speech by the government³ are subject to "strict scrutiny", and will only be upheld upon a showing that such restrictions "promote a compelling [governmental] interest" and are the "least restrictive means to

¹ Jake swears that was his actual cost. Looking at his website, I believe him.

² See, e.g., City of Dearborn v. Dan Mekled d/b/a ID Solutions, FA 99602 (Nat. Arb. Forum Nov. 12, 2001)(insufficient evidence that "City of Dearborn" is a protected common law mark); City of Myrtle Beach v. Information Centers, Inc. FA 0112000103367(Nat. Arb. Forum March 8, 2002)("The City of Myrtle Beach is a geographical place. There is insufficient evidence that the name has acquired any secondary meaning [to create a protected trademark interest]"); and City of Salinas v. Brian Baughn, FA 97076 (Nat. Arb. Forum June 4, 2001)(insufficient evidence that "City of Salinas" mark acquired secondary meaning such that the City of Salinas may claim the exclusive right to use as a trademark).

³ Yes, that includes the Township of West Orange. See Herbert v. Lando, 441 U.S. 153, 168 n. 16 (1979).

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further the articulated interest". See, e.g., Sable Communications of California, Inc. v. Fed. Comm. Commission, 492 U.S. 115, 126 (1989), and about a kajillion other U.S. Supreme Court free speech cases.

4) Will you kindly explain exactly which of its "federally protected rights" the Township believes my client "may" have violated.

5) So that I may properly counsel my client, please also explain what in Sam Hill's name you meant by "anything else confusingly similar thereto."

6) Last but not least, will you kindly provide to me the specific legal basis or bases for the Township's demand that my client cease and desist from "use, ownership and maintenance" of his domain. To paraphrase the bar exam instructions, feel free to cite any authority you consider relevant, including Federal, state or local laws, rules, regulations, ordinances, etc. (even those voluminous Township playground rules no one pays attention to). Since New Jersey Rule of Professional Conduct 4.1(a)(1) prohibits a lawyer from making a "false statement of material fact or law to a third person", surely you must have persuasive authority for the Township's extraordinary demand that my client relinquish private property lawfully purchased and owned by him.

If you manage to produce supporting authority that even remotely passes the laugh test, I will donate \$100 in your honor to the American Civil Liberties Union - NJ Chapter. I plan to make the donation online, assuming the State of New Jersey has not shut down acu-nj.org.

* * *

But of course, only a humorless suit would have sent such a response to your literary gag gift.

Sincerely yours,

[Handwritten signature]

Stephen B. Kaplitt

P.S. Off topic, but as long as we're chatting, I hereby demand from the Township a refund in the amount of \$28,763.22 for excess property tax levied on 74 Terrace Avenue since my acquisition of ownership on August 9, 2010. Detailed calculations and legal authority available on request.

P.P.S. Wait, I have a better idea. I just learned that westorange.gov is still available and any state or local agency can license it from the U.S. General Services Administration for only \$125 per year. Since the whole refund thing might trigger a stampede if word got around, instead how about if I form a limited liability company to conceal my identity, and then use it to license westorange.gov from the GSA - I'll just need a letter from Mayor Parisi designating my LLC as an authorized Township agent - and then my LLC will sublicense it to the Township for a paid-up royalty of \$28,763.22! Pretty clever, huh? Krakoviak will be a hard sell, but Sayers should like it. Just something to consider ...