



ELECTRONIC FRONTIER FOUNDATION

Protecting Rights and Promoting Freedom on the Electronic Frontier

June 23, 2014

Robert P. Ducatman
Jones Day
North Point
901 Lakeside Avenue
Cleveland, Ohio 44114-1190

BY EMAIL: rducatman@jonesday.com

Dear Mr. Ducatman:

I write in response to your letter of June 10, 2014 regarding the website <http://kevynorr.com/>. The Electronic Frontier Foundation represents the site owner, who created this site for parody and political criticism directed at Detroit's emergency manager and various corporations. In your letter, you demand that all Jones Day trademarks be removed from the site. Please be advised that our client will not comply, and has no obligation to do so. Your legal threats are not supported by law and plainly seek to interfere with protected speech.

Our client is launching his full site tomorrow. When you review its content, you will see that no person could possibly be confused as to whether Jones Day endorses the site. The website fiercely criticizes Kevyn Orr, Jones Day, and other individuals and corporations that our client believes have acted against Detroit's best interests. The placement of the Jones Day mark—under the tag line: “Detroit's Economic Coup D'etat has been brought to you by”—is an obvious parody of corporate sponsorship. *See Bosley Med. Inst., Inc. v. Kremer*, 403 F.3d 672, 679-80 (9th Cir. 2005) (no likelihood of confusion where website criticized mark owner); *Lamparello v. Falwell*, 420 F.3d 309, 314-15 (4th Cir. 2005) (same).

In your letter, you write that the Copyright Act's fair use provision “has no bearing or application” to trademark infringement. But, as I'm sure you are aware, trademark law includes its own protection for fair use. *See KP Permanent Make-Up, Inc. v. Lasting Impression I, Inc.*, 543 U.S. 111, 114 (2004); *ETW Corp. v. Jireh Pub., Inc.*, 332 F.3d 915, 921 (6th Cir. 2003); *New Kids on the Block v. News Am. Publ'g Inc.*, 971 F.2d 302, 306 (9th Cir. 1992) (nominative fair use protects use of marks the “purposes of comparison, criticism [or] point of reference”). Your letter ignores these protections. It is difficult to escape the conclusion that this was a calculated attempt to confuse and intimidate a person you expected to be unfamiliar with the law.

Contrary to your suggestion, our client does not need “authorization” to use Jones Day's marks. It is well-settled that the First Amendment fully protects the use of trademarked terms and logos in non-commercial websites that criticize and comment upon corporations and products. *See, e.g., Mattel, Inc. v. Walking Mountain Prods.*, 353

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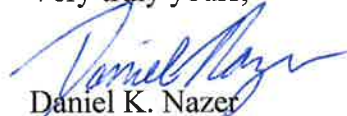
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F.3d 792, 806-08 (9th Cir. 2003); *Koch Indus., Inc. v. Does*, 2:10CV1275DAK, 2011 WL 1775765 (D. Utah May 9, 2011). Our client's site is a clear example such protected expression. You may disagree with our client's speech. But you have no right to silence it.

You state that Jones Day and its over 2500 attorneys will "closely monitor" our client's conduct. We trust that this was not an attempt to bully and intimidate, but a promise that you will "monitor" the situation with close attention and fidelity to the law, including fair use and First Amendment protections. Finally, we understand that you have attempted to use improper legal claims to obtain our client's identity. See *Highfields Capital Mgmt., L.P. v. Doe*, 385 F. Supp. 2d 969 (N.D. Cal. 2005) (firm not entitled to discover identity of anonymous speaker that used trademark to express "clearly sardonic opinion or parody"). Please withdraw your demand for that information immediately. If you wish to contact our client, you may do so through me.

We sincerely hope Jones Day will have the good sense not to trouble a court of law with this matter. However, if you do intend to file suit, please be assured that our client is prepared to defend himself against these spurious claims.

Very truly yours,


Daniel K. Nazer
Staff Attorney

Cc: generalmanager@domainsbyproxy.org