



Julius Stobbs
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VIA EMAIL

**RE: Your Accusation of Trademark Infringement Regarding
Collusion.so - Ref: 2451/12562**

Dear Mr. Stobbs,

I write in response to your firm's letter of January 8, 2018 regarding the domain name collusion.so. The Electronic Frontier Foundation represents the domain owner. In your letter, you accuse our client of infringing the COLLUSION trademark owned by your clients ASOS plc and ASOS.com Limited ("ASOS"). You demand that our client transfer the domain name to your clients. Please be advised that our client will not comply, and has no obligation to do so.

As you will see, it would be difficult to imagine a set of circumstances further removed from trademark infringement than our client's registration of the collusion.so domain. The story begins with Rudy Giuliani, former New York mayor and current attorney to President Donald Trump. Last year, some Twitter users noticed that Mr. Giuliani was making typographical errors in his tweets in a way that inadvertently created well-formed URLs. A September 15, 2018 tweet read, in part, as follows: "#REALNEWS: Woodward says no evidence of collusion.So does Manafort's team."¹

Our client noticed that Mr. Giuliani had inadvertently tweeted the URL "collusion.so" and decided to register the domain name. As a comment on U.S. politics, our client chose to direct the URL to the Lawfare blog's collection of articles regarding connections between President Trump and Russia.² Our client has no association with the Lawfare blog.

The registration of collusion.so received some press coverage. For example, Engaget explained:

[Giuliani] failed to put a space between "collusion" and "So" in this tweet, so someone bought "collusion.so" and redirected it to Lawfare under the topic "The

¹ Available at: <https://twitter.com/RudyGiuliani/status/1041168209074941952>

² Lawfare is a high-profile blog focusing on U.S. national security issues. The collusion.so domain directs visitors to: <https://www.lawfareblog.com/topic/russia-connection>

Russian Connection” (Lawfare itself didn't do this). There, you can find many, many articles about Mueller’s Russia investigation and the Trump-related discoveries thereof.³

Other people also registered the domain names for URLs inadvertently tweeted by Giuliani. Eventually, Mr. Giuliani falsely accused Twitter of “invading” his tweets and these acts became a national news story.⁴

In your letter, you write that the COLLUSION mark is the “ultimate youth label” and explain that ASOS recently launched a clothing line under this brand. You claim that our client is “taking unfair advantage of ASOS’ reputation in the COLLUSION brand and the COLLUSION trade mark by luring customers to your website for your own gain.” These allegations are ludicrous.

Trademark infringement requires, “use in commerce [of a] copy, or colorable imitation of a registered mark in connection with the sale, offering for sale, distribution, or advertising of any goods or services on or in connection with which such use is likely to cause confusion, or to cause mistake, or to deceive.” 15 U.S.C. § 1114(1)(a). Our client’s registration of the collusion.so mark for an act of sardonic political commentary is not a “use in commerce” subject to trademark law. *See Koch Indus., Inc. v. Does*, 2:10CV1275DAK, 2011 WL 1775765, a *7 (D. Utah May 9, 2011). Moreover, there is no possible claim of confusion regarding your client’s youth clothing line. Visitors to the collusion.so domain are directed to a website that relates to the dictionary (and contemporary political) meaning of “collusion.” *See Informa Business Information, Inc. v. Privacydotlink Customer 640040 / Domain Manager, Web D.G. Ltd.*, WIPO Case No. D2017-1756 (denying UDRP complaint where “disputed domain name [was registered] for its generic or descriptive value and has not used it in a manner that trades off the Complainant’s trade mark rights”).

While you might not have been expected to know the entire story behind collusion.so, two facts would have been immediately apparent if your firm had performed a cursory investigation before sending its letter. First, a simple WHOIS search reveals that our client registered collusion.so on September 16, 2018, which is *before* your client launched the COLLUSION clothing line. As your own letter explains, ASOS launched its COLLUSION line on October 1, 2018. Second, if you had visited collusion.so you would have seen that it directs visitors to a page about the alleged political collusion between the Trump campaign and Russia. From these facts, it should have been apparent that the

³ Steve Dent, *Rudy Giuliani blames Twitter for his spectacular typo fail*, Engaget, Dec. 5, 2018, at <https://www.engadget.com/2018/12/05/rudy-giuliani-twitter-typo-fail/>

⁴ *See* Daniel Victor, *Rudy Giuliani Says Twitter Sabotaged His Tweet. Actually, He Did It Himself*, New York Times, Dec. 5, 2018, at <https://www.nytimes.com/2018/12/05/us/politics/rudy-giuliani-twitter-links.html>

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registration of collusion.so did not in any way relate to your client's business and was not trademark infringement.

I note with some concern that your law firm appears to have a history of abusive trademark complaints and reverse domain hijacking. Reverse domain name hijacking means "using the [UDRP administrative process] in bad faith to attempt to deprive a registered domain-name holder of a domain name." *See* Rules For Uniform Domain Name Dispute Resolution Policy, Rule 1 definitions.

In *Virgin Enterprises Limited v. Domain Admin/This Domain is for Sale, Hugedomains.com*, WIPO Case No. D2017-1961, Stobbs IP represented the complainant. The Panel found that "the Complaint was made in bad faith as an attempt at Reverse Domain Name Hijacking, constituting an abuse of this administrative proceeding." *Id.* The Panel further noted that "[t]he Complainant must have realized that the disputed domain name was one out of many combinations of descriptive words" that that it "cannot monopolize all combinations of dictionary words with the term "virgin."" *Id.*; *see also Informa Business Information, supra* (Panel made finding of reverse domain name hijacking); *The Chancellor, Masters and Scholars of the University of Cambridge v. Kirkland Holdings LLC*, WIPO Case No. D2015-1278 (Panel found "[s]ufficient grounds for a finding of abuse plainly exist").

It appears that your firm has not learned the lesson of these cases and is continuing to make abusive trademark threats. At a minimum, your firm should conduct an investigation before sending demand letters like the one sent to our client. We urge you to be more responsible when sending trademark cease and desist letters in the future.

Our client's registration of collusion.so does not infringe, or even remotely relate to, your client's trademarks. We ask that you immediately withdraw your complaint with 101domain. If you were to file a UDRP complaint, it would be an abuse of the UDRP administrative process and an attempt at reverse domain name hijacking. We sincerely hope that you and your client will have the good sense not to trouble any arbitrator or court of law with this matter.

Very truly yours,



Daniel K. Nazer
Senior Staff Attorney

Cc (by email): Hermon Bahru, Paralegal, Stobbs IP Limited

Abuse & Compliance Department, 101domain GRS Ltd.