



KAPLITT LEGAL CONSULTING

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June 20, 2020

Richard D. Trenk, Esquire
Township Attorney for the Township of West Orange
Trenk DiPasquale
1600 Mount Pheasant Avenue
Suite 4000
Wast Orange, New Jersey 07052

Dear Mr. Trenk,

I am pro bono counsel to Jake Frievald and write in response to your “cease and desist letter”, dated May 20, 2020, 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. Frievald had not previously encountered a humorous lawyer, he actually thought your letter may have been a serious effort by the Townshihp 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...?)
westorangeinfo.patch.com
westorangenj.net (now *that* sounds like a Township website!)
westorangehistory.com
westorangetax.com
westorangenurseries.com
westorangeins.com
westorangebassanglers.com (my personal favorite)

westorangephoto.com

westorangeparade.com

westorangephrology.com

westorangeplumber.com

westangerotary.com (sounds suspicious! I suggest you investigate)

Oh, and just to play along, *had* 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. Frievald'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 in the 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, free hosting) is so minimalist that is 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.
- 3) I can't believe I really have to explain this, but here goes... After nearly a century of jurisprudence, it is well settled that content-based restrictions on free speech by the government 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 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 believe my client "may" have violated.
- 5) So that I may properly counsel my client, please also explain what 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 [aclu-nj.org](https://www.aclu-nj.org).

* * *

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

Sincerely yours,
Stephen B. Kaplitt