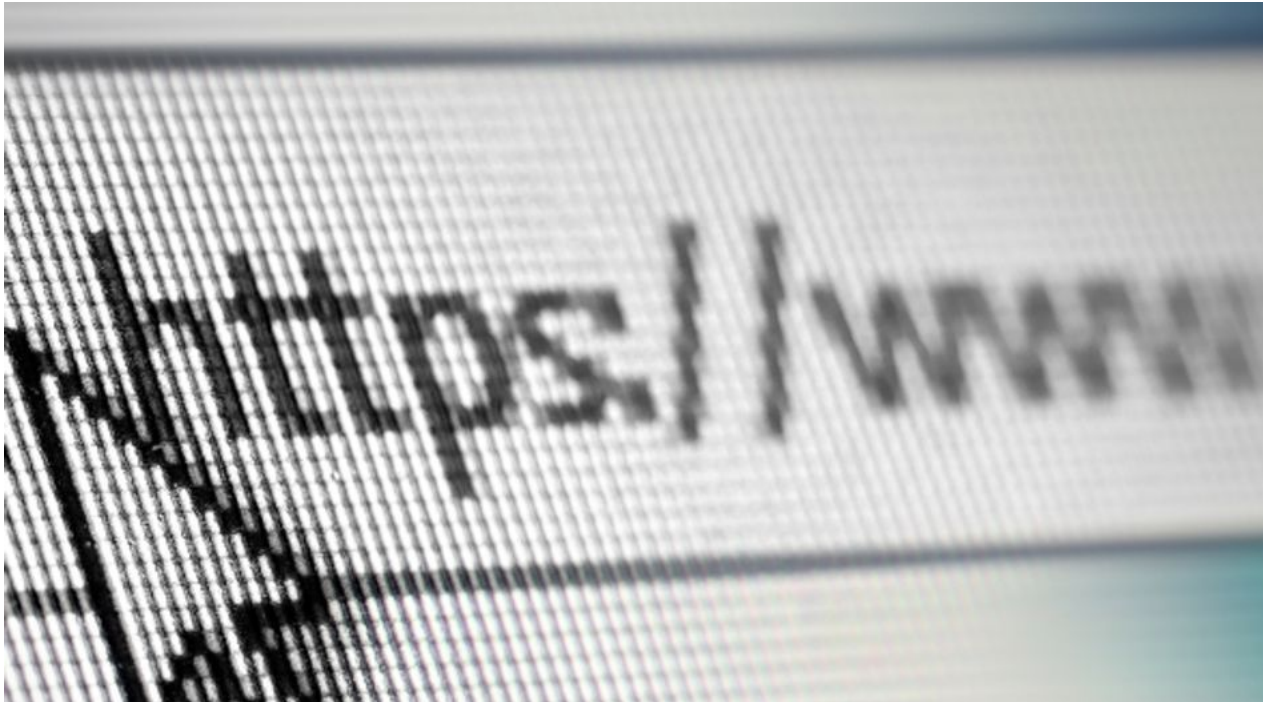


US film financier loses to 'gripe site'

Jane Seager and Lanlan Bian

Hogan Lovells

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INTERNATIONAL

Legal updates: case law analysis and intelligence

- Ryan Kavanaugh sought the transfer of a domain name that resolved to a website comparing him to Harvey Weinstein
- The panel found that the website was, by all appearances, a genuine "gripe site" rife with non-commercial criticism of the complainant in various forms
- The complainant had failed to prove that internet traffic flowing to the respondent's website resulted from bad faith on the respondent's part

In a recent [decision](#) under the [Uniform Domain Name Dispute Resolution Policy](#) (UDRP) before WIPO, a three-member panel has denied a complaint for the domain name 'doesryankavanaughlooklikeharveyweinstein.com', finding that the respondent's use for a non-commercial criticism site was protected under the UDRP.

Background

The complainant was a US film financier and film and television producer whose name appeared in the Internet Movie Database in connection with a number of films and TV series for which he was a producer. The complainant's domain name 'rkavanaugh.com' resolved to his personal website. On 15 November 2021 the complainant filed a US trademark application for RYAN KAVANAUGH under Serial No 97125566, with an alleged first use in commerce date of 18 May 2004.

The respondent was a Swedish entity and agent for Ted Entertainment Inc, based in the United States. Ted Entertainment produced the H3 Podcast, which had criticised the complainant.

The disputed domain name was registered on 16 October 2021, and resolved to a website that featured pejorative, critical statements about the complainant and compared him to Harvey Weinstein. The website at the disputed domain name included:

- banners asking "Does Ryan Kavanaugh Look Like Harvey Weinstein?";
- statements detailing aspects of the complainant's personal and professional history, including his personal and professional association with Harvey Weinstein; and
- statements on and links to news articles detailing his purported arrest for drunk driving, his purported involvement in a Ponzi scheme, and other incidents purportedly involving him.



The website also included a link to a YouTube video, which was an episode of the H3 Podcast featuring criticism of the complainant, and discussion of news articles featuring him.

To be successful in a complaint under the UDRP, a complainant must satisfy the requirements of Paragraph 4(a) of the UDRP, namely that:

- (i) the domain name registered by the respondent is identical, or confusingly similar, to a trademark or service mark in which the complainant has rights;
- (ii) the respondent has no rights or legitimate interests in respect of the domain name; and
- (iii) the disputed domain name has been registered and is being used in bad faith.

Decision

Identity or confusing similarity

The complainant contended that the domain name was confusingly similar to his RYAN KAVANAUGH trademark, in that it reproduced the trademark in its entirety along with numerous negative terms. The respondent argued that the domain name posed a question for discussion and commentary, namely "Does Ryan Kavanaugh Look Like Harvey Weinstein?" and that the added words created a different impression from the complainant's trademark, and were unlikely to create confusion with the trademark.

In this regard, two panel members found that the additional elements ("does" before, and "look", "like" and "Harvey Weinstein" after) resulted in a very different overall impression that was not confusingly similar to the complainant's trademark, while the third panel member was of the opinion that the addition of these other terms would not negate a finding of confusing similarity because the complainant's trademark was recognisable within the domain name. However, given the panel's unanimous finding under the second and third limbs, this difference of opinion amongst the panel members with regard to the first limb did not affect the outcome.

Rights or legitimate interests

The panel noted that the disputed domain name actually posed an implied question, namely "Does [the complainant] resemble [a former film producer convicted of sex crimes]?", and that internet users viewing the corresponding website would not be misled as to its source or sponsorship. The panel found that the website was, by all appearances, a genuine "gripe site" rife with non-commercial criticism of the complainant in various forms, including photographic composites of the complainant and Harvey Weinstein, accompanied by statements that they were visually similar individuals, which implied that, in the respondent's view, the complainant was as objectionable as Harvey Weinstein.

Regarding the complainant's allegation that the respondent competed with him based on the link to the YouTube video of the H3 Podcast on the respondent's website, the panel held that the YouTube video link evinced only a minimal, incidental degree of commercial activity, and that the respondent's website was mainly dedicated to non-commercial criticism. The panel further rejected the complainant's claim that similarities between the respondent's website and the complainant's website conveyed an association with his trademark, finding that the similarities cited by the complainant were superficial, and could feasibly be shared by many websites criticising or commenting on the complainant. The panel concluded that the complainant had therefore failed to satisfy the requirements of the second limb.

Bad faith

The panel dismissed the complainant's assertion that the respondent's website was one of several competitor websites being used to describe the complainant's services, finding that the respondent and the complainant were not competitors and that the respondent's website was being used for non-commercial, legitimate criticism of the complainant. The panel was unconvinced by the complainant's argument that redirecting traffic to websites that provided "lies for the purpose of commercial gain" violated the UDRP, in that the complainant had failed to prove that internet traffic flowing to the respondent's website had resulted from bad faith on the respondent's part. The panel concluded that it was beyond its ability and the scope of the UDRP to assess whether the respondent's website was defamatory, noting that the complainant had not identified which statements made by the respondent on the website were "lies". The panel therefore found that the respondent's registration and use of the domain name was not in bad faith.

Despite their different opinions regarding the first limb, ultimately the panel unanimously held that the respondent was using the domain name for genuine non-commercial free speech, and not as a pretext for cybersquatting or commercial activity to misleadingly divert the complainant's customers. The complaint was therefore dismissed.



Jane Seager

Author | Partner

jane.seager@hoganlovells.com

Hogan Lovells

Lanlan Bian

Author

Hogan Lovells

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