

DNAAttorney.com's Zak Muscovitch respond to the question of whether Hillary Clinton has reasonable grounds to file a UDRP against ClintonKaine.com, considering its current use:

If someone has a claim it is not clear that it would be Hillary Clinton herself, since the domain name also comprises Tim Kaine's name. Perhaps it would be the Democratic National Committee. From a practical perspective, if she were to commence a UDRP Complaint today, with only 62 days left until Election Day on November 8, 2016, she might not even get the decision in time, or at least not long before the election itself.

The last time I studied UDRP timelines in 2014, the median time for publication of a decision by WIPO was nearly 64 days, and the median time for NAF was 44 days. But regardless of the practicalities, for a number of reasons, it is unclear whether a UDRP Complaint over this domain name would even succeed if properly defended and heard by a decent UDRP panel.

First of all, it is unclear whether CLINTON KAINE is even a trademark, since trademarks by definition, must be used in commerce. This 'ticket' is certainly used in politics, but it is not clear whether it is used in commerce, like a trademark has to be in order to qualify as such.

Second of all, even if it has been used in commerce, for example, through the sale of branded paraphernalia, there are very strong freedom of speech rights in the US, such that the registrant could possibly argue that there is a fundamental right to register and use this domain name for freedom of speech purposes. Even if the domain name is being forwarded to a Trump website, that could assist, rather than detract from those freedom of speech arguments.

Lastly, there is a more nuanced, even philosophical argument, that the election itself is the most appropriate place to resolve this dispute, and it may not help either party to be involved in a legal proceeding over this domain name.

Question: We've seen HillaryClinton.com transferred via UDRP in the past, and in the corporate world it seems commonplace to file UDRPs against websites that are detrimental to the company's image, so would a UDRP against ClintonKaine.com be probable?

The HillaryClinton.com domain name was transferred pursuant to a UDRP decision, over 10 years ago, in 2005. The registrant did not respond to the Complaint, and very often cases which are not defended result in poor decisions.

But in this particular case, what may have assisted Hillary Clinton in particular, was not the degree that she was a well-known political figure (having served as United States Senator from New York for five years at that point), but rather the fact that she was then a best-selling author of "It Takes a Village: and Other Lessons Children Teach Us", which was published in 1996 and had sold 622,000 copies, and of "Living History" which had sold 1.68 million hard copies and 525,000 paperbacks since its 2003 publication. This enabled the panelist to conclude that she had trademark rights, since she had used her personal name, which in commerce, and is therefore possibly distinguishable from the CLINTONKAINE.COM situation.

Ultimately, I don't think there is going to be a UDRP both for the practical reasons mentioned above, and also because the DNC would likely not want to start a dispute where it was likely that freedom of speech rights would be used as a defense, and also because right now they have bigger fish to fry.