

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF PUERTO RICO**

RURAL ROUTE 3 HOLDINGS, L.P.,

Plaintiff,

v.

PATRICK A.P. DE MAN,

Defendant.

Case No. 17-01948 (JAG)

RE: Sections 1125(a) and (d) of the Lanham Act, 15 U.S.C. §§1125(a) and (d); Articles 26 and 29 of the Puerto Rico Trademark Act, P.R. Laws Ann. Tit. 10, §§223w and 223z; Damages pursuant to Article 1802 of the Puerto Rico Civil Code, P.R. Laws Ann. Tit. 31, §5141

**FIRST AMENDED COMPLAINT**

COMES NOW plaintiff Rural Route 3 Holdings, LP (“RR3”), through its undersigned counsel, and respectfully submits its Complaint for Damages and Injunctive Relief against defendant Patrick de Man, and states:

**PRELIMINARY STATEMENT**

RR3 is the 99% limited partner of Aspire Commodities LP (“Aspire”). Defendant Patrick de Man worked for Aspire and its affiliate, Raiden Commodities LP (“Raiden”). Mr. de Man went from working for both entities, to a disgruntled former employee who stole corporate property and then ransomed that data for \$1,000,000. He also filed a lawsuit in state court against Aspire, Raiden and each entity’s principal, Adam Sinn, among others, falsely claiming that he is an owner of Aspire and Raiden.

Most recently, Mr. de Man registered and began using the domain name “ruralroute3.holdings,” which is virtually identical to RR3’s tradename and registered “ruralroute3holdings.com” domain name. There is no good faith reason for Mr. de Man to be

using the name “ruralroute3.holdings.” The only purpose for Mr. de Man’s use of that name is to attempt to confuse the market into thinking he is associated with RR3 when he is not and to injure RR3, Aspire and Mr. Sinn. Mr. de Man’s intentional, bad faith use of the name “ruralroute3.holdings” violates Sections 1125(a) and (d) of the Lanham Act, causes damages sanctionable pursuant to Article 1802 of the Civil Code, and should be stopped immediately.

### **THE PARTIES**

1. Defendant Patrick de Man is of legal age and a resident of Dorado, Puerto Rico.
2. RR3 is a Texas limited partnership engaged in the business of investing in early stage companies and private funds, among other things. RR3’s general partner is Rural Route 3 Management, LLC, and its principal offices are located at 7800 Dallas Parkway, Suite 360, Plano TX 75024.

### **JURISDICTION**

3. This Court has federal question jurisdiction pursuant to 28 U.S.C. § 1331 and supplemental jurisdiction over RR3’s ancillary state law claims pursuant to 28 U.S.C. § 1367.

### **VENUE**

4. This is the proper venue for this action pursuant to 28 U.S.C. § 1391.

### **THE FACTS**

5. RR3 invests in early stage companies and private funds, among other things.
6. RR3 began doing business under the name “Rural Route 3 Holdings” in 2012 and promotes its name in the investment world and, therefore, RR3 has common law trademark rights in “Rural Route 3 Holdings” (“RR3 Mark”). A copy of RR3’s General Counsel’s business card, displaying RR3’s name, is attached as **Exhibit A**. A copy of RR3’s Certificate of Formation is attached as **Exhibit B**.

7. RR3's consistent presentation of its identity and business orientation is critical to its receipt of attractive investment opportunities.

8. On April 20, 2016, RR3 registered, and it currently uses, the domain name "ruralroute3holdings.com" in its business operations. *See*, ICANN WHOIS, a copy of which is included as **Exhibit C**; *see also*, printouts from <https://dcc.godaddy.com/manage/ruralroute3holdings.com/settings> and <https://www.godaddy.com/whois/results.aspx?domain=ruralroute3holdings.com&recaptcha>, copy of which is attached as **Exhibit D**. RR3's name has no connection to its business operations or to any other business. Rural Route 3 is the name of the country road in Illinois on which RR3's principal, Adam Sinn, grew up.

9. Mr. de Man used to work for a RR3 affiliate named Aspire Commodities, LP ("Aspire"). RR3 is the 99% limited partner of Aspire.

10. As a result of his work for Aspire, Mr. de Man has long known of RR3's existence, its name and its use of the "ruralroute3holdings.com" domain name. Mr. de Man has invested jointly with RR3 in at least one project and thus regularly receives and sends emails to RR3 representatives at RR3's "ruralroute3holdings.com" domain.

11. On June 22, 2017, the domain name "ruralroute3.holdings" (the "Infringing Domain Name") was registered. *See*, printout from <https://www.godaddy.com/whois/results.aspx> dated June 23, 2017, copy of which is attached as **Exhibit E**. The next day, in connection with the business in which both RR3 and Mr. de Man jointly participate, Mr. de Man identified his association with the Infringing Domain Name. He copied himself on an email, using the email address [patrick@ruralroute3.holdings](mailto:patrick@ruralroute3.holdings), and instructed

the others on that email to “[p]lease note my new email address.” A copy of Mr. de Man’s email is attached hereto as **Exhibit F**.

12. Mr. de Man has no interest in, and has never claimed an interest in RR3. Mr. de Man has nothing to do with RR3’s business.

13. Mr. de Man uses and associates himself with the Infringing Domain Name in interstate commerce as the attached email demonstrates.

14. Mr. de Man’s use of the Infringing Domain Name in his business dealings has caused, and is certain to cause, confusion in RR3’s market and specifically among (1) those involved with (directly or as customers) the specific business in which RR3 and Mr. de Man jointly participate; (2) brokers and funds who bring investment opportunities to RR3; and (3) entities who are seeking investment funds.

15. The Infringing Domain Name is virtually identical to RR3’s tradename and the RR3 Mark. Indeed, the Infringing Domain Name copies and includes the RR3 Mark and is phonetically identical to RR3 tradename and the RR3 Mark.

16. There is no good faith, legitimate business reason for Mr. de Man to have registered or to use the Infringing Domain Name in any context, but there is especially no reason for Mr. de Man to use that the Infringing Domain Name in connection with the business in which both he and RR3 participate. Mr. de Man could have affiliated his investment activities with an infinite number of symbols, names or words, or combinations thereof. Despite that infinite number of options, Mr. de Man chose to use the name of the road on which Mr. Sinn grew up and the RR3 Mark, which RR3 has used for over five years. Mr. de Man has not chosen to associate his investment activities with the Infringing Domain Name from any good faith, legitimate business reason, but solely out of a bad faith intent to confuse the market, to

improperly trade on the RR3 Mark and the goodwill RR3 has generated for its tradename and the RR3 Mark, to create the inaccurate impression that he is affiliated with RR3 and Adam Sinn, to potentially receive information to which he is not entitled, and/or simply to harass RR3 and potentially harm Aspire by harming its 99% limited partner, RR3.

## COUNT I

### **Violation of Section 1125(a) of the Lanham Act and damages arising therefrom**

17. RR3 incorporates herein by reference the allegations in paragraphs 1-18.

18. RR3 has done business under its tradename and the RR3 Mark since 2012 and has used the “ruralroute3holdings.com” domain name since April 2016. RR3 promotes its name and the RR3 Mark in the investment world and therefore has common law trademark rights in the RR3 Mark.

19. Mr. de Man does business in interstate commerce -- and in the same markets and business segments as RR3 -- using the Infringing Domain Name.

20. The Infringing Domain Name is virtually identical to RR3’s tradename, the RR3 Mark and RR3’s registered domain name “ruralroute3holdings.com.” Indeed, the RR3 Mark is copied into the Infringing Domain Name.

21. Mr. de Man’s use of the Infringing Domain Name has caused and will continue to cause confusion among RR3’s business partners and in the larger market/business community in which RR3 and Mr. de Man operate.

22. Mr. de Man is using the Infringing Domain Name in bad faith – with knowledge of RR3’s name, the RR3 Mark and RR3’s registered domain name, without any legitimate business reason and with the specific intent to cause marketplace/business confusion, in order to potentially receive information intended for RR3 and to which he is not entitled, to create the

inaccurate impression that he is associated with RR3 and/or Mr. Sinn, to unjustly trade on RR3's goodwill and/or to harass RR3 and its principal, Adam Sinn.

23. Mr. de Man's bad faith actions violate 15 U.S.C. § 1125(a).

24. No monetary award can compensate RR3 for the risk of harm Mr. de Man may be able to inflict upon RR3 through his use of a name virtually identical name to the RR3 Mark.

25. The risk of harm to RR3 from Mr. de Man's continued use of the Infringing Domain Name is certainly higher than the harm Mr. de Man will suffer from being ordered to cease using the Infringing Domain Name since that name has no inherent connection to any business and has no goodwill beyond that created by RR3. That is especially true since Mr. de Man registered the Infringing Domain Name on June 22, 2017, and began using it about a month ago, on June 23, 2017.

26. RR3 is entitled to damages, including attorneys' fees, and to an injunction preventing Mr. de Man's bad faith, illegal and unjustified use of the Infringing Domain Name. .

## COUNT II

### **Violation of Section 1125(d) of the Lanham Act and damages arising therefrom**

27. RR3 incorporates by references the allegations in paragraphs 1-28.

28. RR3 has done business under its tradename and the RR3 Mark since 2012 and has used the "ruralroute3holdings.com" domain name since April 2016. RR3 promotes it name and the RR3 Mark in the investment world and therefore has common law trademark rights in the RR3 Mark.

29. Mr. de Man's use and registration of the Infringing Domain name in June, 2017, were done in bad faith and with the purpose of causing marketplace/business confusion. Furthermore, Mr. de Man's actions were carried out with the intent to profit from his use of the

Infringing Domain Name, either by receiving information intended for RR3 to which he is not entitled or to unfairly trade on RR3's goodwill.

30. As such, Mr. de Man's bad faith actions also constitute a violation of 15 U.S.C. §1125(d). *See, for example, Matal v. Tam*, 137 S. Ct. 1744, 1753 (2017).

31. Pursuant to 15 U.S.C. §1125(d)1(C), this Honorable Court should order the forfeiture or cancellation of the domain name "ruralroute3.holdings" or the transfer of such domain name to RR3.

32. RR3 is also entitled to statutory damages in the amount of \$100,000, plus attorneys' fees. RR3 is also entitled to an injunction preventing Mr. de Man's bad faith, illegal and unjustified use of the Infringing Domain Name.

### **COUNT III**

#### **Violation of P.R. Laws Ann. Tit. 10, §223w**

33. RR3 incorporates by reference the allegations in paragraphs 1-34.

34. Mr. de Man's actions as described above also constitute a violation of RR3's rights as owner of the protected tradename pursuant to P.R. Laws Ann. Tit. 10, §223w, which establishes a cause of action under Puerto Rico law for trademark infringement similar to Section 1125(a) of the Lanham Act, 15 U.S.C. §1125(a).

35. Thus, RR3 is entitled to damages and injunctive relief pursuant to P.R. Laws Ann. tit. 10, §223w.

### **COUNT IV**

#### **Violation of P.R. Laws. Ann. Tit. 10, §223z**

36. RR3 incorporates by reference the allegations in paragraphs 1-37.

37. Mr. de Man's actions, as described above, also constitute a violation of RR3's rights as owner of the domain "ruralroute3holdings.com" pursuant to P.R. Laws Ann. Tit. 10,

§223z, which establishes a cause of action under Puerto Rico law for trademark infringement through a domain name similar to Section 1125(d) of the Lanham Act, 15 U.S.C. §1125(d).

38. Further, pursuant to §223z, there is a presumption that the marketplace will be confused by Mr. de Man's use of the domain "ruralroute3.holdings.com" since the domain registered by Mr. de Man in bad faith is substantially similar to RR3's protected domain.

39. RR3 is therefore entitled to damages pursuant to P.R. Laws Ann. Tit. 10, §223z.

## COUNT V

### **Damages pursuant to Article 1802 of the Puerto Rico Civil Code**

40. RR3 incorporates by reference the allegations in paragraphs 1-41.

41. Pursuant to Article 1802 of the Puerto Rico Civil Code, "those who by action or omission cause harm to another, intervening guilt or negligence, are obliged to repair the damage caused." Article 1802 of the civil Code, Laws of P.R. Ann. Tit. 31, §5141.

42. Article 1802 of the Civil Code, within its ample scope, affords protection from the misappropriation of a business's organization and expenditure of labor, skill and money by another for that other person's undeserved advantage. *See, Agudilla Paint Center, Inc. v. Esso Standard Oil Co.*, 183 D.P.R. 901 (2011).

43. "An action for unfair competition lies where a competitive injury occurs, i.e. palming off one's goods as those of a business adversary or passing off a competitor's product as one's own . . . as well as when the commercial advantage of one is misappropriated by another for its own use and profit." *In Re San Juan DuPont Plaza Hotel Fire Litigation*, 802 F.Supp. 624, 642 (D. P.R. 1992) (internal quotations and citations omitted).

44. By using a name virtually identical to RR3 and the RR3 Mark in the same business segments as RR3, Mr. de Man is attempting to confuse the market, palm-off his services



as those of RR3 and to misappropriate RR3's expenditure of labor, skill and money for Mr. de Man's undeserved advantage.

45. Mr. de Man's actions threaten to confuse the market and thereby harm RR3.

46. Mr. de Man's wrongful and unlawful actions, as described above, are the proximate cause of the damages suffered so far, and that continue to be suffered, by RR3.

47. No monetary award can compensate RR3 for the risk of harm Mr. de Man may be able to inflict upon RR3 and Aspire through his use of a virtually identical name to that of RR3. The risk of harm to RR3 from Mr. de Man's continued use of the name "ruralroute3.holdings" is certainly higher than the harm Mr. de Man will suffer from being ordered to cease using "ruralroute3.holdings" since that name has no inherent value to any business and has no goodwill beyond that created by RR3. That is especially true since Mr. de Man registered "ruralroute3.holdings" on June 22, 2017 and began using it on June 23, 2017. Mr. de Man will not suffer much harm, if any, since he began using the offending domain name just a couple of weeks ago.

### **REQUESTED RELIEF**

WHEREFORE, RR3 respectfully requests this Honorable Court that it provides the following relief:

1. Issue a preliminary and, ultimately, permanent injunction preventing Mr. de Man from directly or indirectly using the name "ruralroute3.holdings" or any substantially similar name;

2. Until the hearing on preliminary injunction is held, issue a Temporary Restraining Order providing the relief aforesaid, upon the filing of good and sufficient surety as the Court, in its discretion, is respectfully requested to set immediately in a reasonable amount;

3. Order the forfeiture or cancellation of the domain name “ruralroute3.holdings” or the transfer of such domain name to RR3;

4. Enter an award of damages sufficient to compensate RR3 for the harm it has suffered, including statutory damages of \$100,000 and the attorneys’ fees it incurs in prosecuting this action; and

5. Any other relief that it may deem just or proper.

**RESPECTFULLY SUBMITTED,**

In San Juan, Puerto Rico, on this 7<sup>th</sup> day of August, 2017.

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