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Thursday, 04/05/07

## Keith Urban countersues Keith Urban

By BEVERLY KEEL  
Staff Writer

Keith D. Urban, the painter, has filed court documents claiming that the lawsuit filed by the famous singer Keith Urban about the painter's Web site is baseless and a tool to intimidate him.

In February, country musician Keith L. Urban filed a lawsuit in U.S. District Court in Nashville accusing the Wayne, N.J., painter, who owns [www.keithurban.com](http://www.keithurban.com), of federal trademark infringement and violation of the anti-cybersquatting Consumer Protection Act, among other things. The suit didn't specify monetary damages, but wants the site address transferred to the singer and an injunction barring the painter from operating a site that suggests any relationship between the two.

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The February lawsuit claimed the painter is purposely trying to mislead Internet users into thinking that the Web site and the paintings for sale belong to the singer. At the top are Google ads for the musician's concert tickets and videos. "It has become apparent that he is attempting to capitalize on Keith's success," Paul Freundlich, the musician's publicist, said shortly after the original filing.

Not so, said the painter's attorney.

"This is an odd fact pattern in the sense that you have a situation where you have two individuals with the same name," said the painter's Nashville-based attorney, Paul Kruse. Kruse said it is not a situation of a person of another name masquerading as Urban. "One of the pieces of evidence we made of record is his birth certificate.

"Of course, this is the thing that makes this case a little different than garden-variety, trademark infringement cyber-squatting kinds of cases that the musician's lawyers are painting in his proceedings," Kruse said. "Our guy is a painter. He freely admits that he isn't as famous as the musician, but it is his name.

"It seems like the musician is being very strong-armed in his tactics, when in fact, our guy has had this name since he was born."

Freundlich could not be reached today for comment on the painter's filing.

The painter had the rights to this site address first, according to documents filed by the painter's attorneys on March 28. The painter obtained the domain name in May 1999, which is before the date the musician registered the domain name keithurban.net nearly four months later, the document stated. "Through this lawsuit, the Musician is using his

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celebrity to threaten the Painter to give up intellectual property in which he has legitimate interests.”

The painter’s lawsuit stated, “The Painter’s registration of the domain name keithurban.com and his operation of the related website does not produce confusion, nor does it produce deception or mistake as to the source, affiliation or sponsorship of the website and goods and services advertised thereon.”

The painter’s countersuit requests declarations that he has not done anything that would create a likelihood of confusion over the musician’s asserted trademarks or violate consumer protection or personal rights privacy laws. It said the musician’s long delay in challenging any alleged infringement is “inexcusable and unreasonable,” and because of that the musician intentionally relinquishes his rights to challenge the alleged infringement.

Kruse said the painter rented the space at the top of his Web site to Google, so he did not create its content. “Our guy just signed with Google and Google put that up on his site,” he said. “We are trying to determine if he has any ability to control how Google puts ads up.”

Kruse disputed the claim that the musician has been harmed by any confusion. “If they click on (the Google ad), they’ll buy one of the tickets to his show,” Kruse said. “I guess it causes an initial, ‘Wow, what is going on here?’ But if you move through it a little bit,” it can be determined that it is not the same person as the musician. “How is the musician being harmed, because he still makes money from the sale of the tickets.”

When asked if the painter would display a Web site bio or photo that would immediately differentiate the two men, Kruse said, “I think at this point we are still trying to work things out with the musician to see if we can do that. We have this happenstance of two

individuals with the same name, one of which has become a big celebrity. Prior to him becoming a big celebrity, this wasn't an issue."

The painter's countersuit seeks a permanent injunction prohibiting the musician from attempting to cancel or use his domain name registration as long as the painter maintains the registration.

A case management study has been set with a judge on Monday. "From that, everybody is going to begin to see clearer where things are going. Schedules will be set, timetables will be made for next steps. Along the way, we continue to be open to possibilities for settlement. The painter just wants to be able to use his name in some fashion, because it is his name, too."

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