

# The Sarah Palin Channel: Boilerplagiarism and the Lanham Act

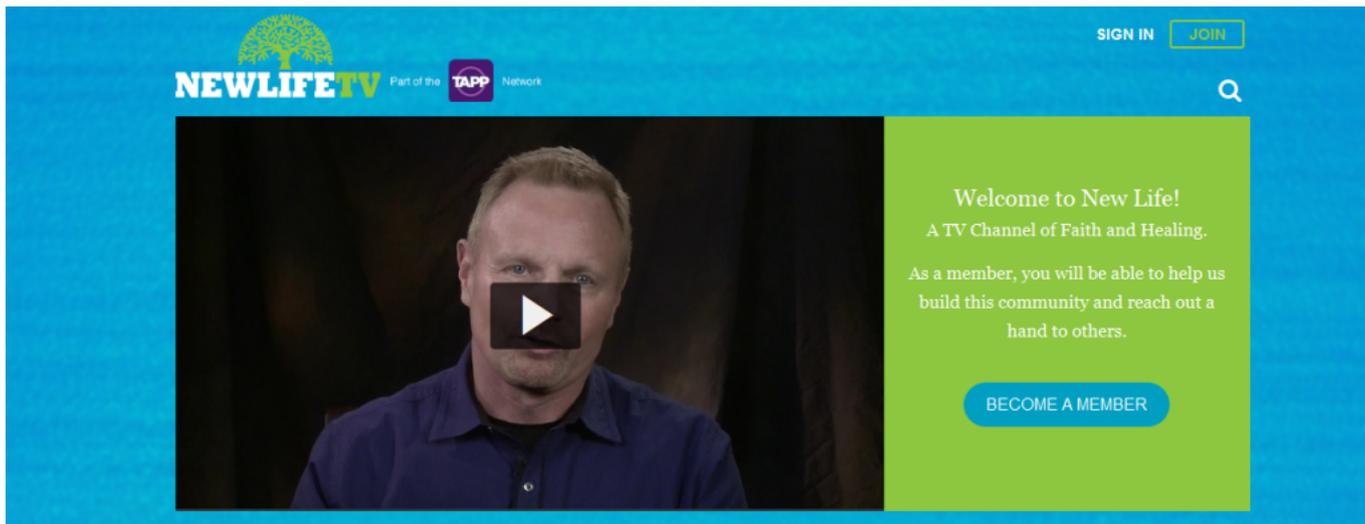
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**Date :** July 31, 2014

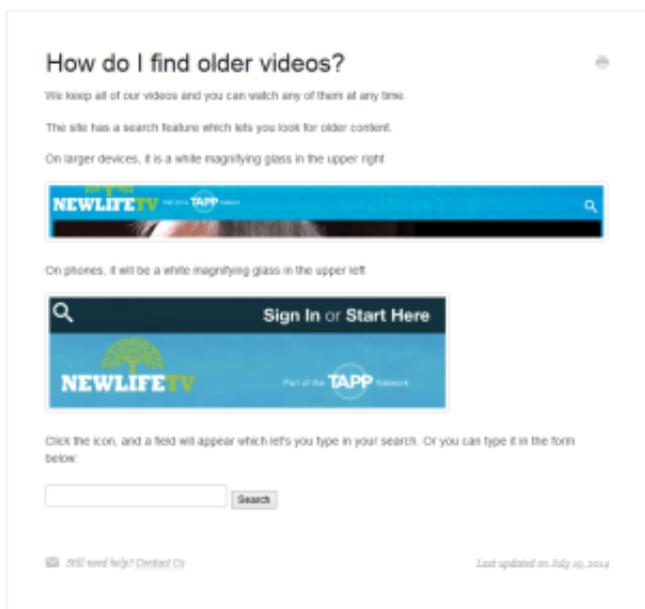
Earlier this week, Sarah Palin launched her own channel. You know it is her channel because it says so. The Sarah Palin Channel is at [www.sarahpalinchannel.com](http://www.sarahpalinchannel.com).<sup>1</sup> [1. Not to be confused with [thesarahpalinchannel.com](http://thesarahpalinchannel.com), a parody site started by Stephen Colbert.] On the home page, there is a video of Sarah Palin welcoming you to Sarah Palin Channel. There is no question that Sarah Palin is heavily involved in the website.

But the site itself is less than simply [low-budget](#). Rather, it is merely the [New Life TV website](#) with a Sarah Palin bumper sticker placed over the strategic parts. The layout of the two sites is exactly the same. The navigation is exactly the same. The “look and feel” of the two sites is exactly the same.



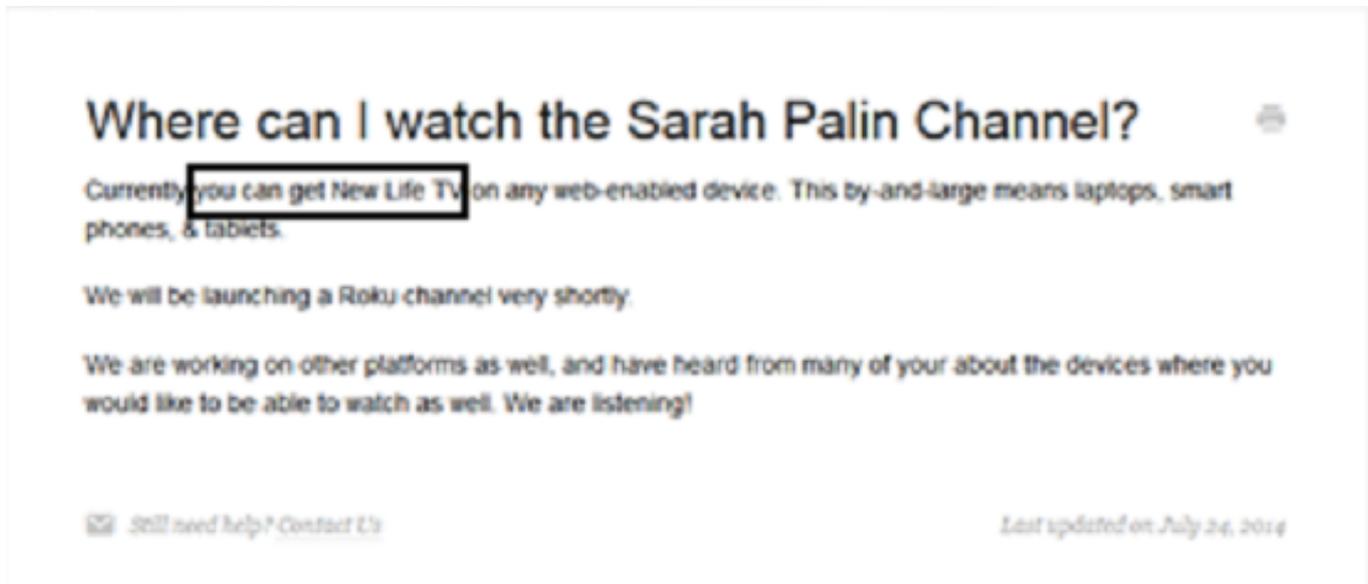


Outside of the paywall, the two sites aren't merely similar, they are mirror images of each other. The language in the Sarah Palin channel FAQ is either copied word-for-word from the New Life website or modified only slightly. For example, when discussing how to view older content, the Palin site merely pasted SPC banners over the New Life banners:





The rest of the SPC FAQ follows the same formula: copy the New Life TV site and change “New Life TV” to “Sarah Palin Channel.” Sometimes, the editors behind the scenes forget to do even that:



While clearly this is just a sloppy cut and paste job by the site builders, it is somewhat understandable. SPC is a sister station to New Life TV on the Tapp Network. One would, however, expect more from the people behind the scenes at Tapp TV—[former chairman of NBC](#)

[Universal TV Entertainment Jeff Gaspin and former president of CNN Jon Klein.](#)<sup>2</sup> [2.

Furthermore, Tapp should have the resources to create actual individualized sites with investors such as [Discovery Communications, Luminari Capital, and other high-profile backers.](#)] Copy and pasting the entire framework of one site to make another seems to be somewhat less than the “[soup-to-nuts service](#)” Gaspin and Klein promise to their personalities.

Had the two sites not been connected, New Life TV might very well have a claim against SPC under the Lanham Act.<sup>3</sup> [3. [15 U.S.C. § 1125](#) (2012). The Lanham Act is the primary means of protecting trademarks.] Although the law lags terribly behind technology, there is some protection website owners have against others copying the “look and feel” of their site. While copyright protection in this area is limited,<sup>4</sup> [4. See U.S. Copyright Office, [Circular 66, Copyright Registration for Online Works](#) (2012).] courts have been willing to entertain trademark cases where the defendants copied the “look and feel” of the plaintiffs’ websites.<sup>5</sup> [5. See, e.g., [Express Lien Inc. v. Nat’l Ass’n of Credit Mgmt. Inc.](#), No. 2:13-cv-03323-LMA-DEK (E.D. La. Aug. 23, 2013); [Blue Nile, Inc. v. Ice.com, Inc.](#), 478 F. Supp. 2d 1240 (2007).] Such cases are difficult to prove, however, even if the look and feel of the two sites is eerily similar. In the case of *Sleep Science Partners v. Lieberman*, the court acknowledged the viability of a trade dress claim in a “look and feel” case, but held that the plaintiff failed to adequately identify the elements of the alleged trade dress.<sup>6</sup> [6. [No. 09-04200-CW](#), at 9–10 (N.D. Cal. May 10, 2010). On the difficulty in bringing “look and feel” cases generally, see Liz Brown, [Bridging the Gap: Improving Intellectual Property Protection for the Look and Feel of Websites](#), 3 N.Y.U.J. Intell. Prop. & Ent. L. 310 (2014).] The parties in *Sleep Science Partners* sell similar products in a similar way, but the similarities are nowhere near those between the Sarah Palin Channel and New Life TV. Compare the home pages of the parties in *Sleep Science Partners*:



Unlike the Puresleep and ZQuiet sites, Sarah Palin Channel and New Life TV—aside from the banners—are virtually indistinguishable. The SPC site clearly appropriated the New Life language, look, and feel for it's own. Because the portions of the site that are copied are

background material and not substantive, this is perhaps not plagiarism, but the lesser crime of boilerplagiarism—copying and pasting boilerplate and claiming it as one’s own. This would not be a problem under most circumstances, but in this instance there is a question of whether such boilerplagiarism rises to the level of false advertising, which is also actionable under the Lanham Act.

On the [“About the Channel” page of SPC](#), the author—who the reader is being led to believe is Palin—tells you why you should become a member:

[W]e have launched our video channel looking for the support of our community through subscriptions. We also feel that the community would feel more secure knowing everyone watching, uploading videos, and participating in the discussions and video chats was a contributing member and not anonymous. . . . We think our videos are valuable to many, and encourage you to pass them on to friends in this way.



Contact

CATEGORIES

[About the Channel](#) >

[Accounts](#)

[Signing Up](#)

[Using the Site](#)

### Is the Channel member only?

Yes, we have launched our video channel looking for the support of our community through subscriptions. We also feel that the community would feel more secure knowing everyone watching, uploading videos, and participating in the discussions and video chats was a contributing member and not anonymous.

That said, you are free to share your favorite videos with your friends on Facebook and elsewhere, and if they click on the links you share they too will be able to watch the video you share (although not see or participate in the conversation around it). We think our videos are valuable to many, and encourage you to pass them on to friends in this way.

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*Last updated on July 24, 2014*

Whether Governor Palin truly feels that way is up for debate, since the words are not her own. Rather, they are copied verbatim from the New Life site that was up three months earlier. The site editors even forgot to edit the New Life page they copied out of the URL on SPC.<sup>7</sup> [7. <http://sarah-palin-channel-help.helpscoutdocs.com/article/33-is-new-life-tv-member-only>]

## Is New Life TV member only?



### Is New Life TV member only?

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*Last updated on April 21, 2014*

The very fact that Sarah Palin has put “Sarah Palin” on every aspect of the website and has labeled herself “Executive Editor”<sup>8</sup> [8. According to *Variety*, Palin “[oversee\[s\] all content posted to the channel.](#)”] leads the reader to imply that when the site uses first person personal pronouns in the sales pitch, the words are those of Palin. They clearly are not. While this misrepresentation may not harm New Life TV, it still has the potential to harm consumers by misleading them. Under the Lanham Act, a person can bring a claim against

Any person who . . . uses in commerce any word, term, name, symbol, or device, or any combination thereof, or any false designation of origin, false or misleading description of fact, or false or misleading representation of fact, which—

(B) in commercial advertising or promotion, misrepresents the nature, characteristics, qualities, or geographic origin of his or her or another person’s goods, services, or commercial activities.<sup>9</sup> [9. [15 U.S.C. § 1125\(a\)\(1\)](#) (2012).]

In order to prove such a claim the plaintiffs would have to prove that:

- (1) SPC made a false or misleading statement of fact in an advertisement or promotion;
- (2) the statement either deceived or had the tendency to deceive, a substantial segment of SPC’s audience;
- (3) the deception is material, in that it is likely to influence the purchasing decision;
- (4) SPC purposefully entered into interstate commerce; and
- (5) the plaintiff was harmed or likely to be harmed by the deceptive statement.<sup>10</sup> [10. See Thomas M. Williams, [False Advertising and the Lanham Act: Litigating Section 43\(1\)\(B\)](#) 38–39

(2012); Courtland L. Reichman & M. Melissa Cannady, [False Advertising Under the Lanham Act](#), 21 Franchise L.J. 187, 187 (2002).]

It is unlikely that Palin's boilerplagiarism is actionable under the Lanham Act.<sup>11</sup> [11. Although I would be interested to see someone bring the claim.] Rather than proving a Lanham Act claim, perhaps the above only demonstrates the sheer laziness involved in the construction of the Palin website. It is also doubtful that Palin will shoulder any of the blame for the misrepresentations on her site. Far more likely, the blame will fall on President Obama or the liberal media.