

## **ADMINISTRATIVE PANEL DECISION**

Michael Zinna v. Charlie Newmark, Newmark Financial  
Case No. D2023-2654

### **1. The Parties**

Complainant is Michael Zinna, United States of America (“United States”), represented by Newman Du Wors LLP, United States.

Respondent is Charlie Newmark, Newmark Financial, United States.

### **2. The Domain Names and Registrar**

The disputed domain names <michaelzinna.com>, <michaelzinna.info>, <michaelzinna.net>, <michaelzinna.org>, <mikezinna.com>, <mikezinna.net>, <mikezinna.org>, <zinnatechmedia.com>, and <zinnaworldwidemedia.com> (the “Domain Names”) are registered with GoDaddy.com, LLC (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 16, 2023. On June 20, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Names. On June 22, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Names which differed from the named Respondent (Unknown Respondent) and contact information in the Complaint. The Center sent an email to Complainant on June 23, 2023 providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amended Complaint on June 30, 2023.

The Center verified that the Complaint together with the amended Complaint satisfied the formal requirements of the Uniform Domain Name Dispute Resolution Policy (the “Policy” or “UDRP”), the Rules for Uniform Domain Name Dispute Resolution Policy (the “Rules”), and the WIPO Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the “Supplemental Rules”).

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified Respondent of the Complaint, and the proceedings commenced on July 7, 2023. In accordance with the Rules, paragraph 5, the due date for Response was July 27, 2023. Respondent sent emails to the Center on July 7, 2023. These emails stated: “Please suspend this baseless dispute. My attorney will be in touch next week. Thank you.”

On July 27, 2023, Respondent requested an extension to file the Response. The Response due date was extended to July 31, 2023. The Response was filed with the Center on August 1, 2023.

On August 1, 2023, Complainant requested leave to file a reply to the Response. On August 3, 2023, the Center advised Complainant that, if it received a supplemental filing, it would be up to the Panel to decide whether to consider it. On August 4, 2023, Complainant submitted a "Reply and Motion to Correct Annex List," together with an amended Annex 5.

The Center appointed Robert A. Badgley as the sole panelist in this matter on August 8, 2023. The Panel finds that it was properly constituted. The Panel has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the Center to ensure compliance with the Rules, paragraph 7.

#### 4. Factual Background

Complainant alleges as follows:

"Michael Zinna is a Hollywood producer and director who has successfully utilized both traditional and new media sources to bring his unique brand of social commentary and celebrity access to television shows, podcasts, and other media outlets. He has appeared both behind and in front of the camera, including hosting his own talk shows. Over his twenty-year career, he has created thousands of segments and shows as producer, director, or performer. 'Michael Zinna' is also well known as 'Mike Zinna' and simply as 'Zinna'."

"Among Mr. Zinna's many producer credits and accomplishments are the Zo What? Morning Show, Here's a Thought With Charles Shaughnessy, and the King Assassin Show. His own talk show, 'The World According to Zinna' was one of the earliest examples of a successful live-streamed independent media broadcast. Mr. Zinna also hosted numerous live terrestrial FM radio programs including 'The Mike Zinna Show', and a PBS television show ('Tough Love with Mike Zinna'). Mr. Zinna also launched and produced a LIVE concert series at the famed 'Whisky a Go Go' where he hosted and broadcasted on his own namesake streaming network (Zinna.TV), hundreds of performances of some of the biggest stars in music and entertainment history."

"As a talk-show host, network executive, and public figure," Complainant alleges, he has interviewed and made public appearances with numerous political figures and celebrities, including Ozzy Osbourne, Stormy Daniels, Jerry Rice, Mike Tyson, Gene Simmons, Billy Idol, Larry Flint, and Ed Begley Jr. Annexed to the Complaint are various photos showing Complainant in the company of various celebrities, and featuring "ZINNA TV" on the marquee of the renowned concert venue "Whisky a Go Go."

According to Complainant, he enjoys common law trademark rights in ZINNA, MIKE ZINNA, and MICHAEL ZINNA through continuous use for 20 years. Complainant states that he uses these marks in commerce in social media, and at his website, accessible via <zinna.com>.

The Domain Name <mikezinna.com> was first registered on March 8, 2018. The Domain Name <mikezinna.net> was registered on April 4, 2020. The Domain Names <michaelzinna.com>, <michaelzinna.info>, <michaelzinna.net>, and <michaelzinna.org> were registered on April 7, 2020.

The Domain Name <zinnatechmedia.com> was registered on October 31, 2022. The Domain Name <zinnaworldwidemedia.com> was registered on November 4, 2022, and the Domain Name <mikezinna.org> was registered on November 5, 2022.

Complainant alleges that one or two of the foregoing Domain Names (he does not specify which of them) were registered by him, but he inadvertently let the registrations lapse.

Respondent asserts that he began registering and using the Domain Names in or around March 2020.

The Domain Names resolve to a website that is, to say the least, highly critical of Complainant. The top of the site says, "MIKE ZINNA: CON ARTIST". Among other things, Respondent's website states:

"Mike Zinna does not pay his debts due from lost lawsuits. He has also been sued multiple times by multiple people it is our opinion to be cautious if dealing with Mr. Zinna in regards to any business matter. One could conclude he is a possible 'con man'. The evidence is as follows: Mike Zinna is known for talking people into investing in his 'companies' or 'ideas'. He has also been accused of not keeping company records. More than one woman has said Michael Zinna used romance and charm to get them to invest money into his 'business'."

The website also states, "This domain is for sale," and provides a telephone number for interested parties to call. It appears that, for some period of time, the website also contained hyperlinks, including "Progressive Pay Per Mile," "Official Berkey Website," and "Health Care Plan Medicare".

Between November 4, 2022 and November 11, 2022, Complainant exchanged emails with the domain name broker affiliated with the Registrar about a purchase of one or more of the Domain Names. The domain name broker indicated that it was acting on behalf of the "owner" of the Domain Names. The broker also said that it has a "relationship with the seller".

At one point during this exchange, in response to Complainant's offer to purchase the Domain Name <mikezena.com> for USD 2,000, the broker responded by stating that the owner was seeking USD 17,000 for that Domain Name, and that the owner would sell all nine Domain Names for USD 25,000. These November 2022 discussions did not result in any deal.

As of June 2, 2023, each of the Domain Names was listed as for sale for USD 40,250 apiece.

Respondent asserts that he was not involved in any discussions with Complainant regarding a possible purchase of the Domain Names. In essence, Respondent appears to be asserting that the broker was acting on its own accord, without authority from Respondent. According to Respondent, he has never met Complainant and never had any direct contact with him. Respondent asserts that he had no idea who the person was who made offers to purchase the Domain Names. Respondent also states that the negotiations between Complainant and the broker in November 2022 were merely "an attempt by the broker ... to generate business".

## **5. Parties' Contentions**

### **A. Complainant**

Complainant contends that it has satisfied each of the three elements required under the Policy for a transfer of the each of the Domain Names.

### **B. Respondent**

Respondent asserts that Complainant has no trademark rights, and that Respondent has a legitimate interest in the Domain Names because he has the right to criticize Complainant for his allegedly "malicious and devious conduct" which purportedly harmed one of Respondent's friends.

## **6. Discussion and Findings**

Paragraph 4(a) of the Policy lists the three elements which Complainant must satisfy with respect to each of the Domain Names:

- (i) the Domain Name is identical or confusingly similar to a trademark or service mark in which Complainant has rights; and
- (ii) Respondent has no rights or legitimate interests in respect of the Domain Name; and
- (iii) the Domain Name has been registered and is being used in bad faith.

#### **A. Identical or Confusingly Similar**

The Panel concludes that Complainant has common law rights in the unregistered trademarks MIKE ZINNA and ZINNA through some evidence of use demonstrated in the record. Although there is no evidence in the record that these marks are necessarily strong or widely recognized, there is sufficient evidence to agree with Complainant that he has been using these marks as source identifiers for his services at least in the greater Los Angeles area, where Respondent also resides. Certainly, Respondent recognizes MIKE ZINNA as a source identifier for Complainant, given the use to which Respondent has put the Domain Names.

All of the Domain Names reproduce part or all of these marks (in a few cases with additional terms such as “tech” and “media”) and are therefore identical or respectively confusingly similar in terms of the Policy.

Complainant has established Policy paragraph 4(a)(i).

#### **B. Rights or Legitimate Interests**

For each of the Domain Names, pursuant to paragraph 4(c) of the Policy, Respondent may establish its rights or legitimate interests in the Domain Name, among other circumstances, by showing any of the following elements:

- (i) before any notice to you [Respondent] of the dispute, your use of, or demonstrable preparations to use, the Domain Name or a name corresponding to the Domain Name in connection with a *bona fide* offering of goods or services; or
- (ii) you [Respondent] (as an individual, business, or other organization) have been commonly known by the Domain Name, even if you have acquired no trademark or service mark rights; or
- (iii) you [Respondent] are making a legitimate noncommercial or fair use of the Domain Name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

On the record presented, the Panel concludes that Respondent lacks a legitimate interest in respect of the Domain Names. Respondent clearly has the right to say whatever he wants about Complainant and his allegedly “malicious and devious conduct.” It does not follow from this truism, that Respondent has a legitimate right to use an identical or misleading variation of Complainant’s mark in multiple Domain Names in order to convey his message.

The Panel is not persuaded that the exercise of free speech was Respondent’s primary motivation here. On the record presented here, the Panel finds it more likely than not that Respondent’s primary motivation vis-à-vis the Domain Names was to generate some leverage over Complainant to extract some sort of financial gain or to cause some sort of harm. The Panel reaches this conclusion for a number of reasons. First, the Panel doubts Respondent’s credibility. Respondent’s attempt to disavow any involvement in the November 2022 negotiations with Complainant, albeit through the broker, and his attendant implicit suggestion that the broker was somehow out there acting on its own, *ultra vires*, cannot be seriously credited. Second, the price for the Domain Names kept rising, as Complainant points out. Indeed, by June 2, 2023, each of the Domain Names was listed for sale at the price of USD 40,250.

Third, Respondent kept registering Domain Names once the November 2022 discussions between the broker and Complainant were underway. It is not good faith to register more Domain Names while the possible purchase of existing Domain Names is already under discussion. Fourth, the sheer number of Domain Names registered here does not strike the Panel as consistent with a legitimate, genuine motive to exercise one's free speech rights.

With the foregoing factors in mind, and on a balance of probabilities, the Panel concludes that Respondent's purported free speech motivation is pretextual and not genuine, and that Respondent's main motivation here was to extract some type of financial gain – either out of avarice or vengeance – from Complainant.

Complainant has established Policy paragraph 4(a)(ii).

### **C. Registered and Used in Bad Faith**

For each of the Domain Names, paragraph 4(b) of the Policy provides that the following circumstances, "in particular but without limitation," are evidence of the registration and use of the Domain Name in "bad faith":

- (i) circumstances indicating that Respondent has registered or has acquired the Domain Name primarily for the purpose of selling, renting, or otherwise transferring the Domain Name registration to Complainant who is the owner of the trademark or service mark or to a competitor of that Complainant, for valuable consideration in excess of its documented out of pocket costs directly related to the Domain Name; or
- (ii) that Respondent has registered the Domain Name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that Respondent has engaged in a pattern of such conduct; or
- (iii) that Respondent has registered the Domain Name primarily for the purpose of disrupting the business of a competitor; or
- (iv) that by using the Domain Name, Respondent has intentionally attempted to attract, for commercial gain, Internet users to Respondent's website or other online location, by creating a likelihood of confusion with Complainant's mark as to the source, sponsorship, affiliation, or endorsement of Respondent's website or location or of a product or service on Respondent's website or location.

The Panel concludes, on this record, that Respondent has registered and used the Domain Names in bad faith within the meaning of the above-quoted Policy paragraph 4(b)(i). The Panel incorporates its discussion above in the "Rights or Legitimate Interests" section. The findings and conclusions in that discussion apply with equal vigor to the "bad faith" element of the Policy.

### **7. Decision**

For the foregoing reasons, in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the Domain Names <michaelzinna.com>, <michaelzinna.info>, <michaelzinna.net>, <michaelzinna.org>, <mikezinna.com>, <mikezinna.net>, <mikezinna.org>, <zinnatechmedia.com>, and <zinnaworldwidemedia.com> be transferred to Complainant.

*/Robert A. Badgley/*

**Robert A. Badgley**

Sole Panelist

Date: August 22, 2023