



## CANADIAN INTERNATIONAL INTERNET DISPUTE RESOLUTION CENTRE

### DOMAIN NAME DISPUTE

### ADMINISTRATIVE PANEL

### DECISION

CIIDRC case number:	<b>21993-UDRP</b>	Decision date: 16 November 2023
Domain Name:	<b>stevezinck.com</b>	
Panel:	<b>Dr Gustavo Moser</b>	
Complainant:	<b>Steve Zinck</b>	
Respondent:	<b>Cathy Tie</b>	

#### 1 PROCEDURAL HISTORY

- 1.1 This administrative proceeding is conducted pursuant to the Uniform Domain Name Dispute Resolution Policy (the “UDRP Policy”); the Rules for Uniform Domain Name Dispute Resolution Policy (the “UDRP Rules”), both of which issued under the auspices of the Internet Corporation for Assigned Names and Numbers (ICANN); and the Canadian International Internet Dispute Resolution Centre (the “Centre”, or the “CIIDRC” or the “Provider”) Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the “Supplemental Rules”).
- 1.2 This administrative proceeding concerns the domain name <stevezinck.com> (the “Domain Name”).
- 1.3 The Domain Name <stevezinck.com> was registered on 16 June 2021.
- 1.4 At the time of writing, the Domain Name resolves to an active website, the particulars of which are discussed further below (the “Respondent’s website”).
- 1.5 The procedural history of this case was set out in a letter from CIIDRC to the Panel (defined below) as follows:

- On 7 October 2023, the Complainant filed a Complaint with CIIDRC pursuant to the UDRP Policy and UDRP Rules;
- On 10 October 2023, CIIDRC notified the Registrar of the Domain Name of the commencement of this UDRP administrative proceeding (the “UDRP administrative proceeding”);
- On the same date, the Registrar transmitted by email to CIIDRC (i) a verification response in respect of the identity and contact details for the Registrant/Respondent; and (ii) a confirmation that the Domain Name had been placed on a Registrar lock status;
- The Complainant was found not in compliance with Rule 3.2 of the UDRP Rules, the result of which being that the CIIDRC sent a Deficiency Letter to the Complainant and the Respondent (collectively, the “Parties”) on 10 October 2023;
- On 11 October 2023, the Complainant re-submitted the Complaint, at which time the CIIDRC, as Service Provider, confirmed that the Complaint had complied with the formal requirements of the UDRP Policy, UDRP Rules, and the CIIDRC Supplemental Rules, and that the UDRP administrative proceeding had commenced on 11 October 2023;
- On the same date, pursuant to Rule 4 of the UDRP Rules and Rule 5 of the Supplemental Rules, CIIDRC sent an email to the Respondent notifying it of the commencement of the UDRP administrative proceeding and providing the Respondent with login details to access the Complaint and supporting documents. The CIIDRC has not received undelivered email notifications from the Respondent.
- The Respondent has failed to serve a Response within the deadline prescribed under Rule 5 of the UDRP Rules (ie by 31 October 2023), or at all; and
- The Complainant has elected for a Panel consisting of a single member.

1.6 On 3 November 2023, CIIDRC appointed Dr Gustavo Moser as a single-member Panel (the “Panel”). The Panel finds it that it was properly constituted. The Panel has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by CIIDRC to ensure compliance with Rule 7 of the UDRP Rules.

1.7 On 6 November 2023, the Panel made the Procedural Order No. 1 seeking (a) clarification from the Complainant in respect of the trade mark standing required to commence the UDRP administrative proceeding; and (b) the Complainant’s copy of an official ID document to ascertain his legal name (the “PO1”). The Respondent had the liberty to comment on the Complainant’s response. The CIIDRC transmitted the PO1 to the Parties on 6 November 2023.

1.8 On 13 November 2023, the Complainant responded to the PO1, the particulars of which are discussed further below (the “Complainant’s response to PO1”). The Respondent has failed to respond to PO1.

## 2 FACTUAL ALLEGATIONS

### A. Complainant's Allegations

#### A.1 Background history

2.1 The Complainant asserts the following facts:

- 'Steve Zinck' is the Complainant's personal name which relates to the Complainant personally and professionally; and
- 'Think Zinck Inc.' is the Complainant's holding company that has investments in real estate, property development and publicly traded stocks.

#### A.2 Trade mark standing

2.2 For the purpose of this UDRP administrative proceeding, the Complainant relies upon his personal name 'Steve Zinck' and the Complainant's business name 'Think Zinck Inc.'.

2.3 The Complainant has provided a copy of the articles of incorporation for Think Zinck Inc. effective on 12 June 2015.

### B. Respondent's Allegations

2.4 The Respondent has failed to serve a Response in this UDRP administrative proceeding, the result of which being that the Complainant's factual allegations remain uncontested.

## 3 CONTENTIONS OF THE PARTIES

### A. The Complainant's Case Summary

3.1 The Complainant has advanced the following arguments in support of his position:

- The Respondent's website contains a picture of the Complainant and underneath there is a statement accredited to the Complainant's business 'Think Zinck', which reads as follows: '*Hannah Montana is actually Miley Cyrus – Think Zinck*';
- The Respondent's website is a clear attempt to fraudulently represent the Complainant for unknown purposes;

- There is a significant risk when a third party registers a domain name in someone else's personal name, without the affected person's knowledge and creates a website bearing a photograph of the affected person attributing a statement to that person's business;
- The Complainant is unaware of the Respondent but claims that there is no possible legitimate purpose in connection with the registration and use of the Domain Name;
- The Respondent's ultimate goal with the Respondent's website appears to be in bad faith; and
- In response to PO1, the Complainant provided copies of his ID document and stated the following, in summary: *'I do not believe that Ms. Tie is actually the person who registered this website. I've never had any dealings with her whatsoever, I also looked up what's publicly available about her and she seems to be a very successful person in her field who I can't see having any interest in registering my name as a domain. Add to that, no response was received to your enquiry. If I'm correct, someone is using her identity to try to create a website which could help them credibly represent themselves as me. [...] it's very significant that [stevezinck.com](http://stevezinck.com) shows my picture from my legitimate LinkedIn profile and the quote shown with my picture is attributed to Think Zinck, my company. There is nothing else on this site. (I am Steve Zinck, [stevezinck.com](http://stevezinck.com) leads to a picture of me with a quote attributed to my company. How could anyone other than me have a legitimate right and/or reason to do this?). I truly believe that the person whose name is associated with registering this site has nothing to do with it, I don't know who is behind it, however if I'm right this is someone who is misrepresenting themselves as someone else in order to register a site where they are misrepresenting themselves as me. I find this highly concerning and while my primary goal is to get control of the site, I also think that GoDaddy should be advised to report this to law enforcement; identity theft is a serious offence'.*

## **B. The Respondent's Case Summary**

- 3.2 The Respondent has failed to serve a Response in this UDRP administrative proceeding, the result of which being that the Complainant's contentions remain uncontested.

## **4 REMEDY SOUGHT**

- 4.1 The Complainant seeks a transfer to obtain the ownership of the Domain Name on the grounds set out in section 5.A below.

## **5 DISCUSSION AND FINDINGS**

### **A. The UDRP Threshold**

- 5.1 Pursuant to Rule 15(a) of the UDRP Rules, the Panel shall decide a complaint on the basis of the statements and documents submitted and in accordance with the UDRP Policy, the UDRP Rules, and any rules and principles of law that the Panel deems applicable.
- 5.2 Paragraph 4(a) of the UDRP Policy provides the following threshold for the Complainant to meet in order to obtain the ownership of the Domain Name:
- i. The Domain Name is identical or confusingly similar to a trade mark or service mark in which the Complainant has rights;
  - ii. The 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.
- 5.3 The Complainant therefore has the onus of meeting the above threshold. The evidentiary standard under the UDRP administrative proceeding is the balance of probabilities, which lays down the foundations for panels to determine each of the three UDRP Policy grounds.

#### **A.1 Identical or Confusingly Similar**

- 5.4 The test under the first UDRP Policy ground provides for a juxtaposing approach, according to which the textual, auditory, and visual components of the Domain Name and the Complainant's trade mark are to be compared side by side.
- 5.5 In order to succeed, the Complainant must provide evidence that it has rights in a trade mark or service mark, following which the Panel shall assess whether or not the Domain Name is identical or confusingly similar to the Complainant's trade mark.

##### **A.1.1 Unregistered trade mark rights**

- 5.6 The Panel notes that the Complainant does not have registered trade mark rights and, instead, appears to rely upon unregistered trade mark rights in his personal name 'Steve Zinck' and his business name 'Think Zinck' - its incorporation dates back to 2015.
- 5.7 The UDRP jurisprudence has developed a rather stringent test for individuals whose personal names have been targeted and seek to redress the wrongs perpetrated by cybersquatters. The test routinely requires individual to demonstrate a certain degree of public notoriety and/or commercial success in his or her personal name. Prevailing complainants are therefore often those who reap financial gain from their names.

- 5.8 The WIPO Panel Views on Selected UDRP Questions, Third Edition (the “WIPO Jurisprudential Overview 3.0”), address the issue of whether a complainant can show UDRP-relevant rights in a personal name in paragraph 1.5, as follows:

*“1.5.1 Personal names that have been registered as trademarks would provide standing for a complainant to file a UDRP case.*

*1.5.2 The UDRP does not explicitly provide standing for personal names which are not registered or otherwise protected as trademarks. In situations however where a personal name is being used as a trademark-like identifier in trade or commerce, the complainant may be able to establish unregistered or common law rights in that name for purposes of standing to file a UDRP case where the name in question is used in commerce as a distinctive identifier of the complainant’s goods or services.*

*Merely having a famous name (such as a businessperson or cultural leader who has not demonstrated use of their personal name in a trademark/source-identifying sense), or making broad unsupported assertions regarding the use of such name in trade or commerce, would not likely demonstrate unregistered or common law rights for purposes of standing to file a UDRP complaint”.*

- 5.9 Whilst the Panel does not necessarily agree with this narrow test and would, on the contrary, be willing to consider a more liberal but reasoned standard for personal names under the UDRP – not least as the current test appears to benefit only a certain class of individuals – the Complainant in this case has failed to argue a case on that basis.
- 5.10 In the present case, the Complainant has provided documentary proof of use of his business name THINK ZINCK since 2015, and that remains unchallenged by the Respondent, although the Complainant could have presented far more robust evidence of extensive use of THINK ZINCK. Nonetheless, the Panel has considerable sympathy for the Complainant’s rather uncomfortable position in this case and finds it, also on the basis of Rule 15(a) of the UDRP Rules, that the Complainant has established common law rights in THINK ZINCK within the narrow parameters of this UDRP administrative proceeding (for present purposes, the “Complainant’s unregistered trade mark”).

#### **A.1.2 Juxtaposing exercise**

- 5.11 Having established the Complainant’s trade mark standing for the purpose of this UDRP administrative proceeding, it rests with the Panel the juxtaposing exercise between the Complainant’s unregistered trade mark and the Domain Name.
- 5.12 The Domain Name is <stevezinck.com> and the Complainant’s unregistered trade mark is THINK ZINCK. The term ‘Zinck’ is the most distinguishable element within the Complainant’s unregistered trade mark, in the Panel’s view. The Domain Name wholly incorporates the ‘Zinck’ element in its string, such that the Panel finds the Domain Name to be confusingly similar to the Complainant’s unregistered trade mark.

5.13 The Complainant has therefore met the requirements under paragraph 4(a)(i) of the UDRP Policy.

## **A.2 Rights or Legitimate Interests**

5.14 The Respondent has not submitted a Response within the time prescribed under the UDRP Rules or at all. The Panel is however empowered to draw adverse inferences from the Respondent's default position (Rule 14(b) of the UDRP Rules).

5.15 The Panel notes that the Complainant denies any affiliation and/or association with, or authorisation for, the Respondent of any nature. Moreover, the Complainant further argues that the Respondent is not making a legitimate non-commercial or fair use of the Domain Name.

5.16 The Panel notes that the choice of the Domain Name by the Respondent is unsupported by any credible explanation as to the reason for it to refer to the Complainant and the Complainant's business, which evidences a lack of rights or legitimate interests. Instead, there is compelling evidence on the available record suggesting that the Respondent has attempted to impersonate the Complainant, as discussed under section A.3 below.

5.17 The Panel therefore finds that the Complainant has succeeded under paragraph 4(a)(ii) of the UDRP Policy.

## **A.3 Registration and use in bad faith**

5.18 The Panel has considered the evidence put forward and takes the view that the case circumstances warrant a concurrent assessment of bad faith registration and use, as follows:

- The Complainant's unregistered trade mark dates back to 2015 whereas the Domain Name was registered in 2021;
- There is no credible evidence-backed rationale for the Respondent's choice of the Domain Name;
- The Respondent's lack of participation in the course of this UDRP administrative proceeding;
- The Respondent's website displays, in an unauthorised manner, a photograph of the Complainant (identical to the Complainant's own photograph on the LinkedIn platform), and a statement unduly attributed to the Complainant's business. The Respondent's website does not host any other content;
- There does not appear to be any plausible good faith use associated with the Domain Name;
- The Panel considers that the Respondent has attempted to impersonate the Complainant through the express reference to the Complainant's unregistered trade mark on the Respondent's website and the unauthorised use of the Complainant's own photograph. Although it is not entirely clear the extent to which the Respondent intended to use the Domain Name as a vehicle for commercial venture, on

balance, the Panel takes the view that the Respondent's behaviour would fall into the remit of circumstance (iv) of paragraph 4(b) of the UDRP Policy.

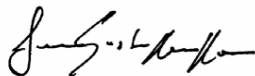
5.19 The Panel therefore finds that the Complainant has succeeded under paragraph 4(a)(iii) of the UDRP Policy.

## 6 DECISION and ORDER

6.1 For the above reasons, in accordance with paragraph 4 of the UDRP Policy, Rule 15 of the UDRP Rules, and Rule 10 of the Supplemental Rules, the Panel finds that the Complainant has satisfied its burden under the three UDRP Policy grounds and orders that the Domain Name <stevezinck.com> be transferred to the Complainant.

Made as of 16 November 2023

SIGNATURE OF PANEL



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Gustavo Moser

