

## **ADMINISTRATIVE PANEL DECISION**

**3C, LLC and Journay Financial Services, LLC, v. Misho Sarkar**  
Case No. D2023-0304

### **1. The Parties**

The Complainant are 3C, LLC and Journay Financial Services, LLC (referred to as “the Complainant”), United States of America (“United States”), represented by Anthony Law, United States.

The Respondent is Misho Sarkar, Bangladesh.

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

The disputed domain name <3chi.biz> (the “Disputed Domain Name”) is registered with NameCheap, Inc. (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on January 23, 2023. On January 24, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On January 24, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Disputed Domain Name which differed from the named Respondent (Privacy Service Provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to the Complainant on January 25, 2023 providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed an amendment to the Complaint on January 25, 2023.

The Center verified that the Complaint together with the amendment to the 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 the Respondent of the Complaint, and the proceedings commenced on February 1, 2023.

On February 8, 2023, the Respondent sent informal emails to the Center.

In accordance with the Rules, paragraph 5, the due date for Response was February 21, 2023. The Respondent did not submit any formal response. Accordingly, the Center notified the Parties that it would proceed to Panel Appointment on February 22, 2023.

From February 22, 2023 to February 25, 2023, the Respondent sent a number of informal emails to the Center.

On February 23, 2023, the Complainant confirmed its wishes to proceed with the proceeding.

The Center appointed Nick J. Gardner as the sole panelist in this matter on March 3, 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**

The two Complainants are affiliated corporate entities. Journay Financial Services, LLC is the owner of the registered trademarks discussed below and 3C, LLC is its exclusive licensee. For present purposes nothing turns on the distinction between the two entities who will be referred to as “the Complainant”.

The Complainant is a provider of consumable hemp-based and cannabis products, with its products widely available throughout the United States. It does so under the brand name “3Chi”. It was formed in 2018. The Complainant operates the website “www.3chi.com” which provides information about Complainant’s products and sells and ships products throughout the United States. The Complainant’s website averages over 200,000 hits per month and substantial monthly sales. The Complainant has invested substantial resources developing, advertising, promoting and marketing the Complainant’s goods under the brand name “3Chi” throughout the United States. The Complainant owns a number of registered trade marks for the term “3Chi” – see for example US registration no 6153407 registered on September 15, 2020. These trademarks are referred to as the “3CHI trademarks” in this decision.

The Disputed Domain Name was registered on December 11, 2021. It resolves to a website (the “Respondent’s Website”) that contains a range of articles and other material some of which contain what appear to be links to third party websites. None of the content of this website appears to relate to hemp or cannabis products.

#### **5. Parties’ Contentions**

##### **A. Complainant**

The Complainant’s contentions can be summarized as follows.

The Disputed Domain Name is identical to the 3CHI trademark as the generic Top Level-Domain “.biz” (“gTLD”) is to be disregarded in making the relevant comparison. The Complaint also relies on common law rights in the term “3Chi” though given the Panel’s findings (see below) the Panel does not consider it necessary to address this issue.

The Respondent has no rights or legitimate interests in the term “3Chi”. The Complainant says that term has no meaning other than in relation to the Complainant and its products.

In consequence the Complainant alleges that the Disputed Domain Name was registered and is being used in bad faith. The Complainant says the Respondent is using the Disputed Domain Name in connection with a fraudulent website designed to trade off the Complainant’s goodwill.

## **B. Respondent**

The Respondent has not provided a formal Response. In his informal communications with the Center (see above) the Respondent indicated that he was prepared to “close the website” and transfer the Disputed Domain Name to the Complainant.

## **6. Discussion and Findings**

### **Preliminary Matters**

While the Panel notes that the Respondent has submitted several emails, no formal Response has been filed by the Respondent. However, given the Complaint and Written Notice were sent to the relevant addresses disclosed by the Registrar, then the Panel considers that this satisfies the requirement in paragraph 2(a) of the UDRP Rules to “employ reasonably available means calculated to achieve actual notice”. Accordingly, the Panel considers it is able to proceed to determine this Complaint and to draw inferences from the Respondent’s failure to file any formal Response. While the Respondent’s failure to file a formal Response does not automatically result in a decision in favor of the Complainant, the Panel may draw appropriate inferences from the Respondent’s default (see, e.g., *Verner Panton Design v. Fontana di Luce Corp*, WIPO Case No. [D2012-1909](#)). It is in any case clear from the Respondent’s informal communications that he is aware of the present proceeding.

### **Substantive Matters**

To succeed, in accordance with paragraph 4(a) of the Policy, the Complainant must satisfy the Panel that:

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

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

The Complainant has rights in the 3CHI trademark. The Panel finds the Disputed Domain Name is identical to this trademark. It is well established that the gTLD, in this case “.biz”, does not affect the Disputed Domain Name for the purpose of determining whether it is identical or confusingly similar. See, section 1.11 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”)

Accordingly the Panel finds that the Disputed Domain Name is identical to the Complainant’s trademark and hence the first condition of paragraph 4(a) of the Policy has been fulfilled.

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

The Panel finds the 3CHI trademark is, on the evidence before the Panel, a term in which the Complainant has developed a significant reputation. It is also a term which as far as the Panel is aware has no meaning save in relation to the Complainant.

Paragraph 4(c) of the Policy provides a list of circumstances any of which is sufficient to demonstrate that a respondent has rights or legitimate interests in a domain name:

- (i) before any notice to the respondent of the dispute, 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) the respondent has been commonly known by the domain name, even if the respondent has acquired no trademark or service mark rights; or

(iii) the respondent is 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.

None of these apply in the present circumstances. The Complainant has not authorised, licensed, or permitted the Respondent to register or use the Disputed Domain Name or to use the 3CHI trademark. The Complainant has prior rights in the 3CHI trademark which precede the Respondent's acquisition of the Disputed Domain Name. The Complainant has therefore established a *prima facie* case that the Respondent does not have any rights or legitimate interests in the Disputed Domain Name and thereby the burden of production shifts to the Respondent to produce evidence demonstrating rights or legitimate interests in respect of the Disputed Domain Name (see, for example, *Do The Hustle, LLC v. Tropic Web*, WIPO Case No. [D2000-0624](#); *Croatia Airlines d.d. v. Modern Empire Internet Ltd.*, WIPO Case No. [D2003-0455](#)).

The Panel finds that the Respondent has failed to produce any evidence to establish his rights or legitimate interests in the Disputed Domain Name. Accordingly the Panel finds the Respondent has no rights or any legitimate interests in the Disputed Domain Name and the second condition of paragraph 4(a) of the Policy has been fulfilled.

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

Under paragraph 4(b) of the Policy a non-exhaustive list of factors evidencing registration and use in bad faith comprises:

(i) circumstances indicating that you have registered or you have acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of your documented out-of-pocket costs directly related to the domain name; or

(ii) you have 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 you have engaged in a pattern of such conduct; or

(iii) you have registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your web site or other on-line location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of your web site or location or of a product or service on your web site or location.

The Panel does not follow the Complainant's argument that the Respondent has been operating a "fraudulent" website. The filed evidence does not appear to support this. The Respondent's Website would appear to comprise a range of articles and material entirely unrelated to the Complainant or its business and includes a number of commercial links to third party websites. However whilst not agreeing with the Complainant, the Panel nevertheless concludes that paragraph 4(b)(iv) of the Policy applies as the Disputed Domain Name is likely to attract traffic because of confusion with the Complainant's mark, and the Respondent derives commercial gain as a result. The Respondent's Website includes a number of links to other third-party websites. The Panel infers that some consumers, once at the Respondent's Website will follow the provided links and "click through" to other sites. The Respondent presumably earns "click through" linking revenue as a result. The Panel infers the website may be automatically generated. This does not however matter. It is well established that where a domain name is used to generate revenue in respect of "click through" traffic, and that traffic has been attracted because of the name's association with the

Complainant, such use amounts to use in bad faith, see for example *Shangri-La International Hotel Management Limited v. NetIncome Ventures Inc.*, WIPO Case No. [D2006-1315](#); *Owens Corning v. NA*, WIPO Case No. [D2007-1143](#); *McDonald's Corporation v. ZusCom*, WIPO Case No. [D2007-1353](#); *Villeroy & Boch AG v. Mario Pingerna*, WIPO Case No. [D2007-1912](#); *Rolex Watch U.S.A., Inc. v. Vadim Krivitsky*, WIPO Case No. [D2008-0396](#).

Accordingly, the Panel finds that the Disputed Domain Name has been registered and is being used in bad faith and the third condition of paragraph 4(a) of the Policy has been fulfilled.

## 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 Disputed Domain Name <3chi.biz> be transferred to the Complainant.

*/Nick J. Gardner/*

**Nick J. Gardner**

Sole Panelist

Date: March 17, 2023