IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF MARYLAND – SOUTHERN DIVISION

ZIVZO, LLC	*	
Plaintiff,	*	Civil Action: 8:25-cv-02075-PX
vs.	*	
DENNIS YU, et al.	*	
Defendants.		

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DEFENDANT DENNIS YU'S RESPONSE IN OPPOSITION TO PLAINTIFFS' PETITION FOR TEMPORARY RESTRAINING ORDER

INTRODUCTION

Plaintiffs ask this Court to deploy a prior restraint by ordering the erasure of an entire publication, extinguishing a criticism domain, and prospectively barring further commentary, all before any adjudication of falsity. That request collides with the First Amendment's "heavy presumption" against prior restraints, a presumption the Supreme Court has enforced even in far graver contexts. *Nebraska Press Ass'n v. Stuart*, 427 U.S. 539, 559–61 (1976); *Near v. Minnesota ex rel. Olson*, 283 U.S. 697, 713–20 (1931); *N.Y. Times Co. v. United States*, 403 U.S. 713 (1971) (per curiam). The Fourth Circuit is to the same effect: speech bans of this sort are presumptively invalid. *In re Murphy-Brown, LLC*, 907 F.3d 788, 795–801 (4th Cir. 2018). On this record, the Petition fails at the threshold and also falters on every *Winter* factor. It should be denied.

BACKGROUND

Plaintiffs allege that on April 22, 2025, Mr. Yu published a longform critique titled "Benson Fischer's ZivZo Marketing: A Forensic Digital Audit," synthesizing public-record materials and offering due-diligence assessments of ZivZo's claims and Mr. Fischer's record. (TRO Pet. ¶¶ 13–26.) Plaintiffs further allege a series of post-publication communications in which Mr. Fischer sought removal, while Mr. Yu asked which statements were false and expressed views about Mr. Fischer's public campaign regarding Nautical Bowls. (Id. ¶¶ 27–46, 48–49.) Months later, Plaintiffs filed this Petition seeking an order to remove the article "from any other Internet platform," terminate the benson-fischer.com domain, and impose broad restraints on future speech. (Id. ¶¶ 47, 55–59; Prayer for Relief.)

PROCEDURAL STANDARD

A TRO is "an extraordinary remedy" available only on a "clear showing" that the movant is entitled to it. *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008). Plaintiffs must establish (1) likelihood of success on the merits; (2) likelihood of irreparable harm absent relief; (3) that the balance of equities tips in their favor; and (4) that an injunction is in the public interest. Id. at 20.

Because Plaintiffs seek a mandatory injunction that would alter the status quo by compelling removal of speech and disabling a domain, the Fourth Circuit treats such relief as disfavored and requires heightened caution before granting it. *Pashby v. Delia*, 709 F.3d 307, 319–21 (4th Cir. 2013); *Taylor v. Freeman*, 34 F.3d 266, 270 n.2 (4th Cir.

1994); *Di Biase v. SPX Corp.*, 872 F.3d 224, 230–31 (4th Cir. 2017). Where requested relief would restrain speech, courts also begin with the First Amendment's heavy presumption against prior restraints. Near, 283 U.S. at 713–20; *Nebraska Press*, 427 U.S. at 559–61; *Org. for a Better Austin v. Keefe*, 402 U.S. 415, 418–20 (1971); *Carroll v. President & Comm'rs of Princess Anne*, 393 U.S. 175, 180–84 (1968); *Murphy-Brown*, 907 F.3d at 795–801.

ARGUMENT

I. The requested TRO is an Unconstitutional Prior Restraint

Plaintiffs ask this Court to command the takedown of an entire article, to shutter a criticism domain, and to prospectively bar further commentary—all in advance of any finding of falsity. That is the paradigm of prior restraint. *Near*, 283 U.S. at 713–20; *Keefe*, 402 U.S. at 418–20 (vacating injunction that barred distribution of literature "of any kind" critical of a private party as an unconstitutional prior restraint); Carroll, 393 U.S. at 180–84 (invalidating ex parte speech restraint). The Supreme Court refused prior restraint even when the Government asserted national-security concerns. *N.Y. Times*, 403 U.S. 713.

A private business dispute, framed in the language of reputational harm, cannot meet a higher bar. The Fourth Circuit underscores the point: such bans are "presumptively invalid," and any order must be narrowly tailored to avert a concrete, compelling harm not addressable by less restrictive means. *Murphy-Brown*, 907 F.3d at

795–801. Plaintiffs' showing does not clear that threshold.

II. Plaintiffs' Cannot Show a Likelihood of Success

a. The Defemation and False Light Theories Fail on this Record

On Plaintiffs' own telling, Mr. Fischer has placed himself at the center of a public controversy—franchising practices surrounding Nautical Bowls—while holding himself out as a national marketing/franchising expert. At minimum, he is a limited-purpose public figure. *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 345 (1974); *Curtis Publ'g Co. v. Butts*, 388 U.S. 130, 154–55 (1967); see *Carr v. Forbes, Inc.*, 259 F.3d 273, 278–80 (4th Cir. 2001). As such, Plaintiffs must prove, by clear and convincing evidence, that Defendant published a false statement of fact with actual malice—knowledge of falsity or reckless disregard for the truth. *N.Y. Times Co. v. Sullivan*, 376 U.S. 254, 279–80 (1964); *Harte-Hanks Commc'ns, Inc. v. Connaughton*, 491 U.S. 657, 659 (1989); *Bose Corp. v. Consumers Union of U.S., Inc.*, 466 U.S. 485, 511 (1984). The Petition does not come close. The communications they attach reflect Defendant asking which statements were false. (TRO Pet. ¶¶ 27–46.) Plaintiffs identify no specific falsehood supported by admissible proof and no evidence of actual malice. That is dispositive at the TRO stage. See *Hatfill v. N.Y. Times Co.*, 532 F.3d 312, 317–18 (4th Cir. 2008*); St. Amant v. Thompson*, 390 U.S. 727, 731 (1968).

The article, as described in the Petition, is a due-diligence critique that discloses the materials on which it relies and then offers evaluative judgments and risk-focused

cautions. Those are classic expressions of opinion with disclosed bases and rhetorical hyperbole—speech the First Amendment protects because reasonable readers can assess the underlying facts for themselves. *Milkovich v. Lorain Journal Co*., 497 U.S. 1, 19–21 (1990); *Hustler Magazine, Inc. v. Falwell*, 485 U.S. 46, 50–56 (1988); *Chapin v. Knight-Ridder, Inc*., 993 F.2d 1087, 1093–96 (4th Cir. 1993); *Biospherics, Inc. v. Forbes*, Inc., 151 F.3d 180, 183–86 (4th Cir. 1998). Maryland law likewise requires a provably false factual assertion, not evaluative criticism. *Piscatelli v. Van Smith*, 424 Md. 294, 306–08, 35 A.3d 1140, 1147–48 (2012); *Shapiro v. Massengill*, 105 Md. App. 743, 772–75, 661 A.2d 202, 216–18 (1995).

b. The ACPA/Domain Theory Cannot Support Injunctive Relief.

Plaintiffs plead the ACPA, 15 U.S.C. § 1125(d); they do not invoke 15 U.S.C. § 1129 (personal names). On Plaintiffs' own allegations, the benson-fischer.com site is criticism, not profiteering, and the Petition does not allege that "Benson Fischer" is a registered mark. Non-commercial commentary sites are not actionable as cybersquatting absent likely confusion or bad-faith intent to profit. *Lamparello v. Falwell*, 420 F.3d 309, 320–26 (4th Cir. 2005); *Radiance Found., Inc. v. NAACP*, 786 F.3d 316, 321–29 (4th Cir. 2015); *Lucas Nursery & Landscaping, Inc. v. Grosse*, 359 F.3d 806, 810–12 (6th Cir. 2004). Trademark labels cannot be used as an end-run around the First Amendment to obtain a speech ban. *Lamparello*, 420 F.3d at 320–26. (TRO Pet. ¶¶ 47, 56; Prayer for Relief).

c. The interference Claim Cannot Bootstrap Protected Speech

Plaintiffs' interference theory turns entirely on their allegations about Defendant's commentary. Lawful, non-defamatory speech on matters of public concern cannot be repackaged as a tort to evade the First Amendment. *Snyder v. Phelps*, 562 U.S. 443, 451–58 (2011). Plaintiffs identify no independent wrongful act and no non-speculative customer loss traceable to provably false statements.

III. Plaintiffs' Cannot Show Irreparable Harm

Plaintiffs waited months after the alleged April 22 publication to seek a TRO. (TRO Pet. ¶¶ 13, 52–55; Prayer for Relief). Reputational and economic injuries are compensable in damages and do not justify an emergency speech ban. *eBay Inc. v. MercExchange, L.L.C.*, 547 U.S. 388, 391–94 (2006); *Sampson v. Murray*, 415 U.S. 61, 90 (1974). By contrast, restraining speech inflicts irreparable constitutional injury on the speaker and the public. *Elrod v. Burns*, 427 U.S. 347, 373 (1976) (plurality); *Giovani Carandola, Ltd. v. Bason*, 303 F.3d 507, 521 (4th Cir. 2002).

IV. The Balance of Equities and Public Interest Favor Denying Prior Restraint

The equities do not favor silencing commentary on franchise practices, marketing claims, and related litigation—subjects of public concern at the core of the First Amendment. Snyder, 562 U.S. at 451–52. The public interest strongly disfavors prior restraints and favors open debate. *Nebraska Press*, 427 U.S. at 559–61; *Near*, 283 U.S. at 713–23; *N.Y. Times*, 403 U.S. 713

V. The Petition is Defective under Rule 65

Plaintiffs offer no sworn evidentiary showing of falsity, actual malice, or imminent harm. See *Winte*r, 555 U.S. at 20–22; *Real Truth*, 607 F.3d at 355–58. The proposed order is overbroad and vague—demanding removal "from any Internet platform" and "termination" of a domain—and does not "describe in reasonable detail" the acts restrained. Fed. R. Civ. P. 65(d). Courts have invalidated similar restraints as too sweeping. See *Keefe*, 402 U.S. at 418–20 (striking injunction barring distribution of literature "of any kind"). Plaintiffs also do not address the mandatory security. Fed. R. Civ. P. 65(c).

CONCLUSION

The Petition seeks an unconstitutional prior restraint and fails every Winter factor. The Court should deny it in full. In the alternative, if the Court considers any relief, it must be narrowly tailored to specific, adjudicated-false statements and conditioned on appropriate security under Rule 65(c).

Respectfully submitted,

Dennis Yu

Dated: September 6, 2025

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY on this 6th day of September, 2025 that a copy of Dennis Yu's Response in Opposition to Defendants' Request for Temporary Restraining Order was served on Counsel for Plaintiffs, via email to:

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/s/ Dennis Yu
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