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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

LIBERTARIAN NATIONAL)
COMMITTEE, INC.)
)
Plaintiff,)
)
-vs-)
)
MICHAEL SALIBA,)
RAFAEL WOLF,)
GREG STEMPFLE,)
ANGELA THORNTON-CANNY,)
JAMI VAN ALSTINE,)
MARY BUZUMA, and)
DAVID CANNY,)
JOSEPH BRUNGARDT,)
)
Defendants.)
/

Civil Case No.
5:23-cv-11074-JEL

PRELIMINARY INJUNCTION HEARING
BEFORE THE HONORABLE JUDITH E. LEVY
UNITED STATES DISTRICT JUDGE
Ann Arbor, Michigan - Wednesday, August 23, 2023

APPEARANCES:

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EXHIBITS:

(None offered)

1 Wednesday, August 23, 2023

2 1:01 p.m.

3 -- --- --

4 THE LAW CLERK OF THE COURT: All rise. The United
5 States District Court for the Eastern District of Michigan is
6 now in session. The Honorable Judith E. Levy presiding.

7 Calling Libertarian National Committee versus Saliba,
8 et al.

9 THE COURT: Please be seated. Could I have
10 appearances, starting with the plaintiff. And I'll ask that
11 you just remain seated while you're speaking so that you can
12 speak into the microphone.

13 MR. ZITO: Good afternoon, Your Honor. This is Joseph
14 Zito, lead counsel for the plaintiff.

15 THE COURT: Good. Thank you, Mr. Zito.

16 MR. RODRIGUEZ: And, Your Honor, good afternoon.
17 Oscar Rodriguez, local counsel for the plaintiff.

18 THE COURT: Okay. Thank you very much.

19 MR. CURCIO: Good afternoon, Your Honor. Nick Curcio
20 appearing on behalf of the defendants.

21 THE COURT: Curcio. I'm glad you told me that.

22 That's not what I would have come up with. So thank
23 you very much.

24 All right. Well, this is the date and time that we
25 set for a hearing on plaintiff's motion for preliminary

1 injunction. And I should indicate to you before we get started
2 that I had an opportunity to read the briefs that both sides
3 submitted, the attachments. And there then was a supplemental
4 authority, I think, filed just the other day regarding
5 confusion.

6 So, Mr. Zito, if you want to get started.

7 MR. ZITO: Yes. Certainly, Your Honor. Do you want
8 me ...

9 THE COURT: Why don't you speak from there so that you
10 can be heard through the microphone.

11 MR. ZITO: Okay. Thank you, Your Honor.

12 Well, this is a very straightforward trademark case.

13 THE COURT: Um-hmm. I saw. You say that right there
14 in your brief.

15 MR. ZITO: Okay. We have an incontestable mark.
16 There are only a couple of defenses. None of those have been
17 raised. There aren't any disputed facts as to who is saying
18 what or doing which. The defendant doesn't dispute that they
19 used the exact same mark. It seems to me that a preliminary
20 injunction is warranted in this case. The defendants have
21 indicated they're not going to stop using the mark.

22 There's obvious confusion, as we pointed out in the
23 briefs. And --

24 THE COURT: And you cut and pasted the marks
25 themselves and, lo and behold, they -- I mean, just to

1 the -- well, I'm using glasses so I won't say to the naked eye.
2 But to my eyes, I understand what you're saying intuitively.

3 MR. ZITO: And they raise in their brief some
4 discussion of the rise and fall of Mr. Chadderdon which has
5 nothing to do with the trademark case. My client is the owners
6 of the trademark and they can license and recognize who they
7 choose.

8 THE COURT: Yeah. And one interesting thing about
9 this job as a federal judge is that it's in some way such a
10 privilege to be outside of the political arena. There's
11 certainly some political arena that leads to an appointment,
12 perhaps. I don't really know because I wasn't much a part of
13 that.

14 But lo and behold, I got appointed, nominated and
15 confirmed and ever since then, just so that you're aware of
16 this, Mr. Curcio, I had no reason to weigh in on who should be
17 an elected official or who shouldn't be an elected official.
18 So I guess I'm saying that I won't start today with that.

19 Well, why don't we do this: Why don't we see what the
20 defendants have to say in addition to what they've put in their
21 papers. And then I'll certainly give you another chance to
22 speak, Mr. Zito.

23 Because it surely looks to me, Mr. Curcio, that what
24 you're asking me to do is weigh in on a dispute, an interparty
25 or interpersonal dispute that has been taking place between

1 your group and the National Libertarian Party.

2 MR. CURCIO: Your Honor, we actually think we're
3 asking you to do exactly the opposite of that. We have a
4 number of -- again, as Mr. Zito said, we don't dispute that we
5 are using the name Libertarian Party. Our position is that our
6 clients have the right to use that name for a number of
7 reasons. The first, as we started out our brief, is the First
8 Amendment claim, that the trademark, the Lanham Act, simply
9 doesn't stretch to cover this type of conduct; that being
10 political fundraising, political activities and the other
11 things that are alleged in the complaint.

12 As the Sixth Circuit has held in the *Taubman* case, the
13 Lanham Act is only Constitutional to the extent that it's
14 covering only commercial speech. We see that -- our view is
15 that --

16 THE COURT: What about the *Washington State Republican*
17 *party versus Washington State Grange*, the Ninth Circuit, 2012
18 case, that just says in no uncertain terms that offering
19 services as a political party counts as operating quote/unquote
20 in commerce?

21 Isn't that just exactly what is going on here is this
22 is a political party that is operating in the stream of
23 commerce?

24 MR. CURCIO: This is a political party and it is
25 engaging in fund-raising activities. We do not believe that

1 case would be controlling. I'm not certain whether the Ninth
2 Circuit is one of the circuits which has held consistent with
3 the *Taubman* case that the Lanham Act only applies to commercial
4 speech. I certainly know the Second Circuit is not a circuit
5 in line with that and that's where the principle case on this
6 point comes from, the *United We Stand* case.

7 The Fifth Circuit -- and the two opinions that we've
8 quoted in our brief. As specifically noted, the circuits split
9 and indicated that the Sixth Circuit falls in the line where
10 noncommercial speech is not projected under the Lanham Act, and
11 makes the further jump, which no court in the Sixth Circuit has
12 to date, that political speech, including political services,
13 like those in this case, are pure political speech that falls
14 outside of the Lanham Act's protection.

15 So that's our position on that, Your Honor. We
16 believe that the *United We Stand* case from the Sixth
17 Circuit -- sorry.

18 From the Second Circuit as well as the -- I believe
19 it's *Contaga* (phonetic) case, the district court case out of
20 the Virgin Islands that the LNC relies on, I believe those are
21 distinguishable just because they don't arise under Sixth
22 Circuit law and the Sixth Circuit law is different on these
23 points.

24 Moving to our second argument, we have a contractual
25 claim that the -- because our -- my clients, the defendants in

1 this case, are members of the Libertarian Party of Michigan,
2 they have the right to call themselves -- to use the term
3 Libertarian Party.

4 I would note that Defendant Buzuma was the
5 gubernatorial candidate just less than a year ago for the
6 Libertarian Party. There have been no formal action to remove
7 her or any of the other defendants from the party. There's
8 been no formal disaffiliation of any of the defendants. I
9 would note under the Libertarian Party national bylaws
10 disaffiliation requires a two-thirds vote --

11 THE COURT REPORTER: I'm sorry.

12 THE COURT: Can you slow down?

13 MR. CURCIO: I apologize.

14 THE COURT: Thank you.

15 MR. CURCIO: I would note that under the Libertarian
16 Party national bylaws disaffiliation --

17 THE COURT: I don't think you slowed down.

18 Usually what happens is people speed up after I ask
19 them to show down.

20 MR. CURCIO: Under the Libertarian Party national
21 bylaws disaffiliation requires a two-thirds vote of the LNC for
22 cause and as we read it only applies to groups -- it only
23 applies to the party itself as opposed to groups or
24 individuals.

25 There's a further provision in the LNC bylaws -- I'm

1 sorry. In the Libertarian Party national bylaws that states
2 that the autonomy of state level affiliates shall not be
3 abridged. And as we read that provision, it means that --

4 THE COURT: See, I am not in a position to read the
5 Libertarian Party bylaws and then enforce the bylaws or
6 interpret the bylaws. I'm not a master libertarian official
7 who has any knowledge of those bylaws.

8 I mean, you've certainly referenced them and I think
9 attached certain portions. But for your arg- -- the way in
10 which you're arguing your case is implying that what my job is
11 here is to determine who the real libertarians are. And from
12 my childhood it's, you know, "Will the real libertarians step
13 forward."

14 I can't do that. I'm not qualified to do it. I don't
15 have jurisdiction to do it. What I have to look at is from my
16 reading of the law your argument that you've started out with
17 that this is not commercial speech, that it's political speech,
18 and it doesn't relate. That argument I think it has -- is not
19 an issue in our case. And that, as far as I understand the
20 law, the Washington State Republican Party case and others,
21 that this is -- it is Lanham Act -- the trademark does come
22 under the Lanham Act.

23 And so the idea that -- so we're starting with that.

24 But let me just see if Mr. Zito has anything further
25 you want to say just on that point on whether the Lanham Act

1 covers this mark because it's a political -- representing a
2 political party.

3 MR. ZITO: Well, yes, the Lanham Act does apply
4 because it's a registerable mark. What opposing counsel is
5 doing is conflating the issue of political speech --

6 THE COURT: He is.

7 MR. ZITO: -- versus the use of a trademark. You can
8 talk about a political party and that's free political speech.
9 You can't pretend to be that political party. That's protected
10 under the Lanham Act, and that's where the division is. This
11 case is about pretending to be not saying things about. So ...

12 THE COURT: Yeah. And I don't think that the *Taubman*
13 case -- point to me in the *Taubman* case where it says anything
14 about whether a political party's activities are commercial.

15 MR. CURCIO: So the *Taubman* case, it doesn't address
16 political parties.

17 THE COURT: Oh.

18 MR. CURCIO: It addresses the application of the
19 Lanham Act in noncommercial speech and says the Lanham Act
20 can't be extended to noncommercial speech.

21 THE COURT: Well, then, show me a Sixth Circuit case
22 that says this is not commercial speech.

23 MR. CURCIO: There is no Sixth Circuit case on that
24 point, Your Honor. I don't believe the Sixth Circuit or any
25 district courts within the Sixth Circuit have had the

1 opportunity to address that question since *Taubman*. I would
2 point just through the Sixth Circuit cases discussing that
3 question.

4 THE COURT: Okay.

5 MR. CURCIO: Back to -- if I may?

6 THE COURT: Yes.

7 MR. CURCIO: Back to the point about the bylaws. We
8 are, again, not asking the Court to determine who the rightful
9 leadership of the Libertarian Party of Michigan is. I've
10 actually expressly asked the Court not to decide that question.
11 We believe that question is, first off, best left to the
12 members of the party.

13 THE COURT: Definitely.

14 MR. CURCIO: And secondly, to the extent it needs to
15 be decided by a court, we would think it's a matter of state
16 law that could be addressed in the Comerica Bank declaratory
17 action case.

18 So I know the brief provided a lot of factual
19 background about the dispute, but that was really just for
20 context. That information for the most part does not show up
21 in our argument section of the brief.

22 Our argument on the Libertarian Party bylaws is that
23 they are a contract between the party and its members. Our
24 clients are still members of the Libertarian Party of Michigan
25 and we believe that as such they have the right to call

1 themselves members of the Libertarian Party of Michigan until
2 they're removed as members of the party, if that, you know,
3 could feasibly occur.

4 THE COURT: I'm just not in a position to say who is a
5 libertarian and who is not a libertarian. That's for your
6 members. I think you had some members come with you today.
7 That's for them to decide if they want to be in the Libertarian
8 Party or not.

9 So I have such a limited role here today and it's just
10 to look as this trademark. Do you agree that it's considered
11 what is an uncontestable mark?

12 MR. CURCIO: We do agree with that, Your Honor.

13 THE COURT: Incontestable. Okay. So we've got that
14 much agreement. So that means that the registration shall be
15 conclusive evidence of the validity of the registered mark and
16 of the registrant's ownership of the mark.

17 So you agree that plaintiff owns the mark?

18 MR. CURCIO: Yes, Your Honor.

19 THE COURT: Okay. And do you agree that plaintiff has
20 sent a cease and desist letter to your clients to stop using
21 the mark?

22 MR. CURCIO: Yes, Your Honor.

23 THE COURT: And then you agree that they continued to
24 use the mark?

25 MR. CURCIO: Yes, Your Honor.

1 THE COURT: And you agree that they continued to
2 collect money and that people thought that they were -- are the
3 rightful users of that mark? You think they are and they think
4 they are.

5 MR. CURCIO: Yes.

6 THE COURT: They may be. I don't know anything about
7 that. But I just want to know if after getting the cease and
8 desist letter they continued to use the mark.

9 MR. CURCIO: Yes, they have. Our position is that the
10 permission to use the mark has not been properly revoked under
11 the Libertarian Party's governing documents, which in this case
12 are the bylaws.

13 THE COURT: See, my governing document is the Lanham
14 Act. And I can't enforce the Libertarian Party's bylaws. I
15 can enforce the Lanham Act.

16 MR. CURCIO: To the extent it's a contract, we would
17 argue that the Court can enforce it.

18 THE COURT: Well, you're the defendant in the case and
19 it wasn't brought as a contract case. Do you have a
20 counterclaim for a contract enforcement?

21 MR. CURCIO: No. My understanding is that in
22 proper -- or authorization to use a trademark is a proper
23 defense in a trademark case without any need for a
24 counterclaim. Perhaps, I'm wrong about that.

25 THE COURT: Well, I don't know the answer to that, but

1 in this case I do know that you have a cease and desist letter
2 that you acknowledge -- your clients acknowledge receipt of and
3 they didn't cease and desist. And I guess I could look at
4 those letters and see exactly what the words were used in
5 response.

6 And, yeah, I mean, plaintiff says you're not
7 authorized. They're telling the Court through their filing
8 that your clients are not authorized to use that mark.

9 Now, on the free speech issue, they can talk all they
10 want about this injustice from the National Libertarian Party
11 and they can hold themselves out as libertarians and talk about
12 the libertarian ideology, bring people into the fold, promote
13 their candidates, talk about their candidates. It's just the
14 use of the mark. There's nothing limiting their political
15 speech at all.

16 And, in fact, I encourage everybody I know to engage
17 in their political speech of whatever their views are. So ...

18 But do you agree that your client has since the cease
19 and desist letter, which I think was this past January of 2023,
20 has your client continued to collect donations as the
21 Libertarian Party?

22 MR. CURCIO: Yes, Your Honor.

23 THE COURT: And would you agree that there's been
24 confusion among the public about whether your client is the
25 duly authorized Michigan chapter of the Libertarian Party?

1 MR. CURCIO: No, I don't believe there is confusion
2 about that. Our clients have been very upfront with donors and
3 everyone through communications to the party listener, which
4 they have, because they were the previously elected leadership
5 of the party prior to the June 22 convention. There's been
6 numerous communications to the full membership of the party
7 regarding the nature of the leadership dispute indicating that
8 the LNC supports the Chadderdon faction over the Saliba
9 faction, and then soliciting donations specifically for the
10 defense of this lawsuit and other legal proceedings pertaining
11 to that dispute.

12 And if you look -- I believe it's the very last
13 exhibit attached to our response brief, we've provided a full
14 accounting of all monies received from the date the cease and
15 desist letter was sent to the date that our response brief was
16 filed and the reasons for those donations. Most of them are to
17 what is called the legal defense fund, which is to defend this
18 suit as well as to prosecute the declaratory judgment action
19 that's pending in Washtenaw County Circuit Court.

20 We've also attached affidavits about the social media
21 campaigns that were used to induce that fundraising and believe
22 we've been very transparent with the membership of the party
23 about what the funds are being used for and why they're being
24 solicited. So we don't believe there's confusion to that
25 regard.

1 THE COURT: Well, I just opened up your website.

2 "Peace, Prosperity and Freedom. All of your freedoms.
3 All of the time. Common sense on the issues."

4 How would I know that this is not the National
5 Libertarian Party's authorized affiliate?

6 MR. CURCIO: If you go to the Donate tab, there's
7 a disclaimer that will pop up. And that's in evidence
8 at -- let's see.

9 I believe it's Exhibit 14.

10 THE COURT: I see a notice of ongoing governance
11 dispute.

12 MR. CURCIO: Yes.

13 THE COURT: What about the submission of new evidence
14 of confusion that was filed on August 17th?

15 MR. CURCIO: That has to do with filings to state
16 election authorities. We don't believe that that's use in
17 commerce. There's similar cases about the registration of
18 entity names is not a violation of the Lanham Act from the
19 district court in the Sixth Circuit. One of them may be cited
20 in our brief. I can't recall.

21 But we would rely on that line of cases to say that
22 submitting filings to authorities is not use in commerce that's
23 covered by the Lanham Act. If my clients, in fact, don't have
24 the legal authority to do that, they're perhaps violating
25 election laws or those types of things.

1 And in fact, this LNC chair, McArdle, has filed an FEC
2 complaint about federal -- similar federal campaign filing
3 that's pending with the FEC. We would argue those are the
4 appropriate forms to address that type of conduct if it is,
5 in fact, illegal as the plaintiff's allege, and that
6 trademark -- it doesn't amount to a trademark violation.

7 THE COURT: Okay. Anything else?

8 MR. CURCIO: No, Your Honor. I think I'll stand on my
9 briefs for the remaining points.

10 THE COURT: Okay.

11 MR. CURCIO: I'm sorry. One more point that was not
12 addressed in the briefs.

13 THE COURT: Sure.

14 MR. CURCIO: If this Court is inclined to issue an
15 injunction, and it seems like that may be, we would ask for
16 a -- again, we don't believe that's appropriate for the reasons
17 stated in the brief.

18 THE COURT: I understand.

19 MR. CURCIO: But if you are so inclined, we would ask
20 that a bond be set. Under Federal Rule of Procedure 65(c), we
21 believe that our fundraising totals as indicated in Exhibit 23
22 of our response brief showed that, basically, a four-month
23 window of fundraising where \$20,000 approximately was raised,
24 somewhere between 19,000 and 20,000. This case could go on
25 quite awhile if it's appealed or just further proceedings in

1 this court far beyond four months. We would ask for a bond of
2 at least 20,000 be set based on those figures.

3 THE COURT: Okay. Well, let me -- we'll get back to
4 that.

5 Mr. Zito, is there anything you want to say in
6 response to what's been argued?

7 MR. ZITO: For want of going ahead and repeating some
8 of the things we've already said, I believe their website
9 itself shows the confusion. The website says we are the
10 Libertarian Party. But if you read the note, we're not the
11 Libertarian Party, and there's a different Libertarian Party
12 that might be the Libertarian Party, but we're the Libertarian
13 Party.

14 The website itself confuses everyone who reads it. We
15 also showed you an excerpt from a video that's on their website
16 where one of their members came up and said, "I'm very
17 confused."

18 And also they're not looking at the right people.
19 It's not the people that you reach out to donate, it's the
20 voter on the street that you never met who then goes to the
21 voting booth and sees two Libertarian Party candidates. He's
22 confused as to which one is actually the Libertarian Party
23 candidate. So, no. There's confusion. I don't think -- and
24 we don't even need to show that level of confusion because of
25 the incontestability, but there's confusion anyway.

1 I also think the fact that the registrar of the state
2 board of elections was confused into thinking they were the --
3 that's confusion. It is an FEC violation in addition, but it's
4 confusion under the Lanham Act. So I don't think that's an
5 issue.

6 Regarding the bond, we expect to post a bond when you
7 have a preliminary injunction. So that's not a problem. I
8 believe he asked for 20,000.

9 THE COURT: 20,000, he asked for.

10 MR. ZITO: I think that's reasonable. I don't think
11 that there will be that cost because I'm assuming they're not
12 going to stop fundraising for their legal defense. So in the
13 end, we're not agreeing that --

14 THE COURT: No, you don't have to agree.

15 MR. ZITO: There would be a loss.

16 THE COURT: Right.

17 MR. ZITO: They would have to show that some other
18 time. We're not agreeing that there's ever going to be any
19 loss, but we anticipated a bond, Your Honor.

20 THE COURT: The exhibit that you have drawn my
21 attention to that I'm looking at with the donations, are they
22 all to the defense? Most of -- everything I see -- well,
23 there's a lot of defense fund but then there's some convention
24 registrations.

25 MR. CURCIO: Yes, Your Honor. They're not all to the

1 defense fund.

2 THE COURT: Okay.

3 MR. CURCIO: And the 20,000 total -- first off, it's
4 not quite 20,000. It's somewhere between 19 and 20. That's
5 the total number including both the convention registrations
6 and legal defense fund.

7 THE COURT: Okay.

8 MR. CURCIO: And there may be a few other
9 miscellaneous categories as well.

10 THE COURT: There are a few other miscellaneous.
11 You've got a couple of donations directly to you, it looks
12 like, as the lawyer.

13 MR. CURCIO: Yes. The affidavit of Defendant Thornton
14 explains what each of these items means. Most of them, even if
15 they don't say legal defense fund are things that are -- well,
16 that Anedot slash Legal Fund Page, that's also going into the
17 legal defense fund, just through a different channel.

18 THE COURT: And that's A-n-e-d-o-t slash legal defense
19 fund?

20 MR. CURCIO: Yes.

21 THE COURT: Well, having had a chance to read the
22 briefs and to hear the argument today, in terms of a
23 preliminary injunction, I am required by Sixth Circuit law, the
24 *ACLU Fund of Michigan versus Livingston County* case from 2015
25 sets it out very clearly. I'm to balance four factors in

1 deciding whether to grant a preliminary injunction.

2 First, whether the movant has a strong likelihood of
3 of success on the merits.

4 Second, whether the movant would suffer irreparable
5 injury absent the injunction.

6 Third, whether the injunction would cause substantial
7 harm to others.

8 And fourth, whether the public interest would be
9 served by issuance of an injunction. And I'm reminded by that
10 case that preliminary injunctions are extraordinary and drastic
11 remedies, never awarded as of right and that the parties
12 seeking the injunction bears the burden of justifying that
13 relief.

14 And I believe that in this case all four factors weigh
15 in favor of granting the requested relief and entering a
16 preliminary injunction.

17 And that's specifically because in the trademark
18 context, the likelihood of success on the merits is a factor
19 that the Court -- the Sixth Circuit has referred to as often
20 decisive.

21 And I'll say this about preliminary injunctions:
22 Often, even a modest likelihood of success on the merits or
23 even very small, can be outweighed by irreparable injury and so
24 an injunction might be entered if there's irreparable injury
25 with very low likelihood of success on the merits but in this

1 particular type of case I'm required to look first at the
2 likelihood of success on the merits.

3 And, specifically, in the *PGP, LLC versus TB* -- I
4 think it's two. *LLC*, Sixth Circuit in 2018, the Court held in
5 that trademark case that: "If the movant is likely to succeed
6 on an infringement claim, irreparable injury is ordinarily
7 presumed and the public interest will usually favor injunctive
8 relief."

9 So, specifically, I'm to look at -- to prove a
10 trademark infringement action, the plaintiff is required to
11 show that it owns a trademark.

12 It has shown that. The defendant agrees with that.

13 Two, that the infringer used the mark in commerce
14 without authorization. Here, you agree you used the mark. You
15 don't believe it's in commerce, but you understand you're using
16 it after a cease and desist letter has been sent. Now, as I
17 understand the argument, you say this isn't commerce and you
18 say look to the bylaws to determine if it's authorized. But
19 what I'm looking at is what's filed as evidence here.

20 I know I have the bylaws, but -- which is that there
21 is a registered mark. It's being used by the defendant. I
22 believe in commerce, in the sense of that word as it applies in
23 a political party situation. And it's being used without
24 authorization.

25 Three, that the use of the alleged infringing

1 trademark is likely to cause confusion among consumers
2 regarding the origin of the goods or services offered by the
3 parties.

4 And so looking at this, we've already discussed that
5 it's undisputed. That plaintiff owns the Libertarian Party
6 trademark and it's -- we've already discussed that.

7 I've already reviewed the *Washington State Republican*
8 *Party versus Washington State Grange*, which holds that the
9 Lanham Act does cover this type of service offered by a
10 political party.

11 And I guess I -- even though the Sixth Circuit hasn't
12 had the occasion to address this -- and maybe this will be the
13 case where they do get to address this, from my perspective it
14 only makes sense to follow what the Ninth Circuit said. If
15 you're -- as you are, you're using a mark that looks exactly
16 like the plaintiff's mark and you're holding yourself out on a
17 ballot -- well, let's leave the ballot out.

18 But in terms of fundraising and promoting ideas on the
19 website. And the website -- setting aside the fundraising part
20 of the website, it just talks about Peace, Prosperity and
21 Freedom. Now, if that -- and the common sense approach to
22 issues that the libertarians have.

23 And it's got this interesting VIN diagram that has
24 left wing positions such as government regulated economy, using
25 imminent domain for private gain, high taxes. And then it

1 has -- and that's got the donkey.

2 And then it's got the right wing positions. War on
3 drugs, surveillance state. And then it's got the libertarian
4 positions.

5 This is really important information. And if those
6 aren't the libertarian positions from the National Libertarian
7 Party's perspective, this would be chaos. If everybody could
8 claim -- if somebody could claim to be the Republican Party and
9 say we are for women's right to choose, we are for transgender
10 treatment of minors, we are for -- when, in fact, the
11 Republican Party isn't for that. It just seems to me that it
12 would create chaos and that there's a good reason for the
13 Lanham Act to protect these marks so that the public can
14 know -- have confidence when they look at a website and it says
15 it's the Libertarian Party and looks just like the National
16 Libertarian Party, that those really are the positions of that
17 party.

18 So -- okay, where was I? I got carried away. In
19 terms of irreparable harm, in trademark infringement cases --
20 and this is a quote from *Lucky's Detroit versus Double L*. And
21 it's a Sixth Circuit 2013 case.

22 "A likelihood of confusion or possible risk to the
23 requesting party's representation satisfies the irreparable
24 injury requirement."

25 And here I do find that there's both a likelihood of

1 confusion and risk to the plaintiff's reputation. The National
2 Libertarian Party the plaintiff points out that we're coming up
3 to a big election in our country and I guess my job is to not
4 be a part of any of that, but they argue that that makes it
5 sort of more urgent and that the harm could be more irreparable
6 if votes are lost for their candidates because your -- I don't
7 know what -- we'll call it the knockoff Libertarian Party. I
8 don't know what to call it exactly.

9 What am I supposed -- the defendant. Because the
10 defendant is running your own candidates. If they aren't
11 really the candidates of the Libertarian Party, that could be a
12 problem. But I don't think I even have to get involved in
13 whether there's an election coming up or not to reach this
14 irreparable harm factor

15 Harm to others and the public interest, I think weighs
16 in favor of plaintiff in this case. They argue that you will
17 not be harmed if you can no longer identify yourself as the
18 Libertarian Party of Michigan because you can still present the
19 valuable opinions that you have and voters will decide whether
20 they prefer those opinions, want to vote for those opinions,
21 donate to those opinions or donate to the Libertarian Party.
22 So in terms of the public interest, I think that also weighs in
23 favor of the plaintiff.

24 In the *Lorillard Tobacco, Company versus Amouri's*
25 *Grand Foods* case, Sixth Circuit in 2006 -- and that's

1 L-o-r-i-l-l-a-r-d versus A-m-o-u-r-i. There the Court held
2 that preventing consumer confusion and deception in protecting
3 the trademark holder's property interest in the mark is in the
4 public interest.

5 So for those reasons I am granting plaintiff's motion
6 for a preliminary injunction. And there's no opposition to a
7 \$20,000 bond being posted. I believe you pay that to the clerk
8 of court. Is that who you pay that to?

9 MR. ZITO: Yes, typically. Either the percentage of
10 the bond or the full bond to the clerk of the Court, yes.

11 THE COURT: We have -- let me look at the proposed
12 order right now that you sent. The order will be for the
13 reasons set forth -- I will not type this all up into an
14 opinion but let me look -- hold on -- at the proposed order.

15 The bond needs to be added to this so we will -- can
16 you submit this to us in a Word document through utilities on
17 CM/ECF?

18 Mr. Zito or Mr. Rodriguez?

19 MR. ZITO: Say again. I'm sorry.

20 THE COURT: Ordinarily, proposed orders -- I'm glad
21 you included it as an exhibit. But before they're entered,
22 they're submitted as a Word document under utilities in CM/ECF
23 so that we can doctor it up.

24 Because I want to put that we held a hearing today and
25 oral argument was heard from both sides and that an oral

1 decision was set forth on the record and that a bond is
2 ordered.

3 MR. ZITO: We'll get that to you shortly after the
4 hearing.

5 THE COURT: Okay. All right. Is there anything else
6 from the plaintiff?

7 MR. ZITO: Nothing further.

8 THE COURT: Anything else from the defendant?

9 MR. CURCIO: Nothing further, Your Honor.

10 THE COURT: Well, thank you for the opportunity to
11 work on this case so far. And the case will continue.

12 And we have an answer to the complaint that was filed
13 July 31st. So what we'll do is set up a scheduling conference.

14 And in light of the fact that you're here from out of
15 town, Mr. Zito?

16 MR. ZITO: Yes.

17 THE COURT: From Washington D.C., we'll do that by
18 Zoom so no one has to travel for a 20-minute discussion of
19 setting dates in the case.

20 MR. ZITO: Thank you, Your Honor.

21 THE COURT: All right. Well, thank you very much.

22 THE LAW CLERK OF THE COURT: All rise.

23 Court is adjourned.

24 (At 1:39 p.m., matter concluded.)

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C E R T I F I C A T E

I, Darlene K. May, Official Court Reporter for the United States District Court, Eastern District of Michigan, do hereby certify that the foregoing is a true and correct transcript, to the best of my ability, from the record of proceedings in the above-entitled matter. I further certify that the transcript fees and format comply with those prescribed by the Court and the Judicial Conference of the United States.

August 28, 2023
Date

/s/ Darlene K. May
Darlene K. May, CSR, RPR, CRR, RMR
Federal Official Court Reporter
Michigan License No. 6479