



December 14, 2003

Ms. Michele J. Young
Law Offices of Salter & Michaelson
The Heritage Building
321 South Main Street
Providence, Rhode Island 02903

Dear Ms. Young:

This letter is in response to your correspondence of October 30, 2003, which was received at my office on November 4, 2003. You will please note my new address effective September 1, 2002.

I do not recognize the right of your client to demand the transfer of the Internet domain "dinermuseum.com." Mr. Zilka and the American Diner Museum (hereafter "ADM") are no more entitled to this domain than the Philadelphia Museum of Art is entitled to the domain, "artmuseum.com" (a domain held, incidentally, by Intel Corporation of Santa Clara, California). Federal Trademark code considers "Diner Museum" and "dinermuseum.com" generic and therefore unenforceable as trademark.

With regards to the use of Mr. Zilka's name in the keywords of the website, "dinerforsale.com," I acknowledge my error and have already made the requested change.

With regards to "americandinermuseum.com," I am prepared to consider the transfer of this domain without further contest provided I am furnished with substantive proof of the ADM's legitimacy, specifically:

1. All American Diner Museum board meeting minutes dating from January 1, 2002
2. A list of American Diner Museum board members installed since January 1, 2002, their dates of service, and their addresses
3. All publicly filed financial statements for 2002 and 2003
4. The itemized catalogue of its collection as filed with the United States Internal Revenue Service and the Rhode Island Department of Revenue

As a public corporation, it is my understanding that the ADM is obligated to provide this information upon request. I have already submitted a letter to the Rhode Island Secretary of State explaining my difficulties to date obtaining this information from the ADM.

By The Way Magazine and related web sites including www.btwmagazine.com, represent an established media enterprise. My work as a journalist spanning a period of more than 20 years is also well documented. My field of interest is publicly stated and established. Over the past 13 years my publications *Roadside Magazine* and *BTW Magazine* have had a nationally recognized mission of reporting any and all activities related to the diner industry and diner preservation. My commentary on the activities of the ADM represent only a fraction of my reporting in this field of interest.

It is my position that our use of the domain “americandinermuseum.com” falls under First Amendment protection, the Fair Use doctrine, and Title 15; Chapter 22; Subchapter III; Sec. 1125 of United States trademark code allowing for the use of trademarks in “all forms of news reporting and news commentary.” Should you pursue a course of legal action in this matter, I will also rely on the considerable documents in my possession concerning the ADM and the past activities of its Director, its Board of Directors, corporate filings and/or lack thereof.

With regard to the domain “americandinermuseum.com”, my work points directly to the results of an investigation of Mr. Zilka and the ADM that outlines patterns of unprofessional conduct, violations of its bylaws, and other illegal activity. As such, my efforts under this domain name are not “in competition” with the ADM. Your client’s claim that this report might “confuse, mislead, or deceive the consumer public” or that this public might believe the contents of this site are “in some way approved by the ADM,” has, at best, specious merit and is not without some irony.

Further, given that my business is news reporting, the First Amendment to the United States Constitution establishes my right to use “the mark American Diner Museum or Diner Museum or any similar marks in any way in connection with my business” etc. Since the ADM is chartered to preserve diners, I therefore have an obligation to my customers to report on its activities. I have no intention to relinquish that right to Mr. Zilka or the ADM.

Your client has thirty (30) days upon receipt of this letter in which to respond. Should you fail to respond during this period, and/or provide all of the documentation I have requested, my offer will expire without further notification and I will consider this matter closed.

Sincerely,

Randolph Garbin