

ADMINISTRATIVE PANEL DECISION

CitiusTech Healthcare Technology Private Limited v. Anthony Moussa, Moo Companies, Inc.

Case No. D2022-3813

1. The Parties

Complainant is CitiusTech Healthcare Technology Private Limited, India, represented by Vutts & Associates LLP, India.

Respondent is Anthony Moussa, Moo Companies, Inc., United States.

2. The Domain Name and Registrar

The disputed domain name <citustech.com> (the “Domain Name”) is registered with GoDaddy.com, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on October 12, 2022. On October 12, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On October 13, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Name, which differed from the named Respondent (Registration Private, Domains by Proxy LLC), and contact information in the Complaint. The Center sent an email to Complainant on October 14, 2022, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amended Complaint on October 19, 2022.

The Center verified that the Complaint together with the amended 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 Respondent of the Complaint, and the proceedings commenced on October 24, 2022. In accordance with the Rules, paragraph 5, the due date for Response was November 13, 2022. Respondent sent various informal communications on October 19 and October 24, 2022, to which the Center acknowledged receipt.

On October 27, 2022, Respondent submitted a substantive communication to which the Center acknowledged receipt as a Response.

The Center appointed Robert A. Badgley as the sole panelist in this matter on November 9, 2022. 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

Complainant describes itself as “a leading provider of consulting and digital technology to healthcare and life science companies.” Complainant operates in India, the United States, the United Kingdom, the United Arab Emirates, and Singapore. Complainant owns Indian Trademark registration No. 2690440, for CITIUSTECH, registered on March 3, 2014. Complainant claims that the CITIUSTECH mark was first adopted by Complainant as its brand name and logo in the year 2005 when the company was established with the name Citius IT Solutions Private Limited. Complainant claims the mark was also used as a part of the name of Complainant’s subsidiary company in the United States, CitiusTech, Inc., which was established on July 11, 2005. Complainant then changed its own name to CitiusTech Healthcare Technology Private Limited on October 10, 2015.

Because the Domain Name was registered in 2013, the Panel will focus on Complainant and its alleged trademark rights at the time the Domain Name was registered on May 15, 2013.

According to Complainant, since its inception, its revenues exceed USD 1.256 billion.

Complainant’s 2021-2022 revenue for the fiscal year 2021-2022 (expressed in INR Lakhs) was 249,886.

Complainant has experienced significant revenue growth each year, as its revenues since 2013-2014 have increased from 37,528 in 2013-2014 (INR Lakhs) to 46,283 to 60,404 to 74,847 to 80,847 to 112,504 to 143,419 to 158,775 to 249,886. Due to this growth, more than 95% of Complainant’s cumulative revenue since 2005 was earned after the 2012-2013 year. Put another way, only about 5% of Complainant’s all-time revenues were derived prior to the 2013-2014 fiscal year.

Expressed in USD, Complainant’s total revenues prior to the 2013-2014 fiscal year (*i.e.*, through its first eight years) were slightly less than USD 50 million.

Annexed to the Complaint are various documents indicating that Complainant has received various business awards over the years. For instance, in 2011, Complainant was selected as a finalist in the category of “Fastest Growing Company of the Year – Up to 2,500 Employees” by American Business Awards (a/k/a “Stevie Awards”). Also in 2011, Complainant won the “Red Herring Top 100 North America Award for the leading private companies from North America.” Complainant’s CEO was named Ernst & Young’s “Entrepreneur of the Year” in 2013. (It is not clear from the record when this award was announced.)

Complainant asserts common law trademark rights in CITIUSTECH, and presents search engine results as evidence that Complainant and its CITIUSTECH services emerge as the first results in a search for “citiustech.” The record lacks, however, hard evidence about the extent to which CITIUSTECH was recognized among consumers as a source identifier associated with Complainant and its services as of 2013.

As noted above, the Domain Name was registered on May 15, 2013. The Domain Name resolves to the Registrar’s parking page where the Domain Name is offered for sale. Respondent asserts that he is the original registrant of the Domain Name.

Respondent did not submit a formal Response in this proceeding, but sent the Center three separate emails explaining his motives vis-à-vis the Domain Name. Above all, Respondent states, “I was completely unaware of Citius Tech in 2013.”

In his lengthiest email to the Center, dated October 27, 2022, Respondent states in part:

“During the process in which I was researching a new name for my IT company, I researched Latin words for ‘quick’. The word ‘Citus’ came up. I then proceeded to put in relevant variations of the word ‘Citus’ into GoDaddy’s name search to secure a domain name. I purchased several domains that start with the word ‘Citus’. The word ‘Citius’ was never known, searched or considered.”

“During this process, I searched New Jersey’s registered business database. In doing so I confirmed availability of Citus Tech and Citus Technology. These business names are still legally available in the State of NJ where we do business. I did not however establish a business under these names, and have never profited off of these names.”

“Since I did not end up using the name for my business, I simply parked the domains, all of the domains that I own are automatically renewed. Until legal notice was received, I was not aware of ‘Citius Tech’. The aggressive nature taken to seize this name from me is completely unnecessary and unwarranted. I have never benefitted off of the name ‘CitusTech’ and have never been aware of a company ‘Citius Tech’. Had I planned to benefit, I would be forwarding traffic to my business. This never happened.”

“Additionally the words Citus and Citius are not synonymous, the word ‘Citus’ means quick in Latin, the word ‘Citius’ means faster in Latin. The word Citus is two syllables, the word Citius is three syllables. [...]”

“I purchased the name originally in consideration for a Managed IT Services company. Not a healthcare solutions company. The complainant has filed this complaint in an effort to intimidate me into providing them with the name at minimal or no cost. This method is completely unnecessary. The accusation that I registered the name in recognition of the Complainant’s trade mark is false. I was completely unaware of Citius Tech in 2013. In addition, they did not have a trademark until after I already purchased Citustech.com. I was not aware of CitiusTech until this complaint.”

“I have every right to think of a name and hold it because I believe it is a good name. I hold a portfolio of domain names and I renew them consistently. I list them for sale, because owning over 200 domain names gets costly. You never know when someone will want to buy a domain that you own. I firmly believe that if I thought of a name, that it is worth holding. [...]”

“I have every right as an entrepreneur to hold domain names and sell domain names if I believe that while I may not use them for my specific business, that they are good names and hold value. In 2013 I spent significant time coming up with CitusTech.com as a possible name for a business and therefore I have money invested in the name and am due compensation if someone would like to purchase it. My initial listing price of \$2,500 USD is extremely reasonable and was simply to compensate 9 years of ownership and a significant amount of time that I spent initially considering and coming up with the name for my business. When I purchased the domain “MooIT.com” which is my active business, I paid thousands of dollars for it. The complainant has no right to criticize the values that I place on names that I own.”

“I have increased the price of the listing for CitusTech.com to compensate me for the time and effort that I have put into dealing with this issue. Having to deal with this issue is costing me thousands of dollars in billable time that I would naturally be spending on large IT projects. [...]”

5. Parties' Contentions

A. Complainant

Complainant contends that it has satisfied all three elements required under the Policy for a transfer of the Domain Name.

B. Respondent

Respondent did not formally reply to Complainant's contentions, but Respondent's position is quoted above in the "Factual Background" section.

6. Discussion and Findings

Paragraph 4(a) of the Policy lists the three elements, which Complainant must satisfy with respect to the Domain Name:

- (i) the Domain Name is identical or confusingly similar to a trademark or service mark in which Complainant has rights; and
- (ii) 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.

A. Identical or Confusingly Similar

The Panel concludes that Complainant has rights in the trademark CITIUSTECH through registration and use demonstrated in the record. The Panel also concludes that the Domain Name is confusingly similar to that mark. The Domain Name is identical to the mark, except for the deletion of the second "i" in the Domain Name. This slight difference does not overcome the fact that the mark – minus one letter – is recognizable within the Domain Name.

Complainant has established Policy paragraph 4(a)(i).

B. Rights or Legitimate Interests

Pursuant to paragraph 4(c) of the Policy, Respondent may establish its rights or legitimate interests in the Domain Name, among other circumstances, by showing any of the following elements:

- (i) before any notice to you [Respondent] of the dispute, your 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) you [Respondent] (as an individual, business, or other organization) have been commonly known by the Domain Name, even if you have acquired no trademark or service mark rights; or
- (iii) you [Respondent] are 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.

The Panel need not decide this issue, given its conclusion below in the "Bad Faith" section.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy provides that the following circumstances, "in particular but without limitation," are evidence of the registration and use of the Domain Name in "bad faith":

- (i) circumstances indicating that Respondent has registered or has acquired the Domain Name primarily for the purpose of selling, renting, or otherwise transferring the Domain Name registration to Complainant who is the owner of the trademark or service mark or to a competitor of that Complainant, for valuable consideration in excess of its documented out of pocket costs directly related to the Domain Name; or
- (ii) that Respondent has 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 Respondent has engaged in a pattern of such conduct; or
- (iii) that Respondent has registered the Domain Name primarily for the purpose of disrupting the business of a competitor; or
- (iv) that by using the Domain Name, Respondent has intentionally attempted to attract, for commercial gain, Internet users to Respondent's website or other online location, by creating a likelihood of confusion with Complainant's mark as to the source, sponsorship, affiliation, or endorsement of Respondent's website or location or of a product or service on Respondent's website or location.

The Panel concludes that Complainant has not carried its burden of proving that Respondent registered the Domain Name in bad faith under the Policy. To prevail in this case, Complainant must persuade the Panel that, on a balance of probabilities, Respondent more likely than not had Complainant's CITUSTECH trademark in mind when he registered the Domain Name on May 15, 2013. The Panel finds that Complainant has not done so here.

Various facts are relevant to the Panel's determination. First, "citus" and "citius" are not the same word. Second, Complainant had no registered trademark rights at the time the Domain Name was registered.

Third, the record here does not establish that, as of 2013, the CITIUSTECH mark was so well known that someone in Respondent's position (even as an entrepreneur in the tech sector) would probably have been aware of the CITIUSTECH mark. As discussed above, Complainant's business has grown impressively over the years, and it has even surpassed USD 1 billion in all-time revenues. Between the fiscal year 2005-2006 and 2012-2013, it appears that the all-time revenues (for an eight-year period) were slightly less than USD 50 million.

Fourth, the record does not indicate the extent to which Complainant's sales and operations prior to 2013 occurred in the United States (where Respondent is located) as opposed to India and the other countries where Complainant operates.

Fifth, and in part because of the prior four factors, Respondent's explanation why he registered the Domain Name strikes the Panel as plausible. The Panel cannot find any holes in Respondent's story, and cannot find any internally inconsistent statements that could otherwise undermine Respondent's credibility. On the contrary, Respondent's account of his behavior and motives appears rather forthright. The Panel therefore credits Respondent's emphatic and clear denial of any knowledge of Complainant's mark in 2013.

On a balance of probabilities, the Panel notes that that Respondent more likely did not have Complainant's trademark in mind when registering the disputed domain name. Noting the plausibility of Respondent's arguments, the Panel considers very unlikely that Complainant could have provided any evidence or arguments proving the targeting of Complainant and consequently, change the Panel's finding. Given Complainant's burden of proof, this Complaint must fail.

Complainant has not established Policy paragraph 4(a)(iii).

7. Decision

For the foregoing reasons, the Complaint is denied.

/Robert A. Badgley/

Robert A. Badgley

Sole Panelist

Date: November 22, 2022