

ADMINISTRATIVE PANEL DECISION

CitiusTech Healthcare Technology Private Limited v. Citius Technologies,
Citius Tekno Solusi
Case No. D2022-3757

1. The Parties

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

Respondent is Citius Technologies, Citius Tekno Solusi, Indonesia.

2. The Domain Name and Registrar

The disputed domain name <citius-tech.com> (the “Domain Name”) is registered with Tucows Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on October 7, 2022. On October 7, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On October 7, 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 (NOT AVAILABLE) and contact information in the Complaint. The Center sent an email communication to Complainant on October 10, 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 14, 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 19, 2022. In accordance with the Rules, paragraph 5, the due date for Response was November 8, 2022. Respondent sent an informal email communication to the Center on October 10, 2022. The Center informed the Parties of its commencement of Panel appointment process on November 9, 2022.

The Center appointed Christopher S. Gibson as the sole panelist in this matter on November 16, 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 is a provider of consulting and digital technology to healthcare and life sciences companies. Complainant operates in India, Singapore, the United Arab Emirates, the United Kingdom, and the United States of America (“United States” or “US”). Complainant builds applications, deploys enterprise-level software, and is a pioneer in healthcare analytics for the international market. Complainant is established in India and the United States and expanding into other countries. CitiusTech has been funded by various investors for millions of US dollars.

Complainant’s registered trademark is CITIUSTECH and it features in Complainant’s corporate name. Complainant’s CITIUSTECH mark was first adopted as its brand name in 2005 when the company was established with the name, Citius IT Solutions Private Limited. The mark was also used in the name of Complainant’s subsidiary company in the United States, CitiusTech, Inc., which was established on July 11, 2005. Complainant changed its name to CitiusTech Healthcare Technology Private Limited on October 10, 2015. The integral and conspicuous portion of Complainant name, CITIUSTECH, remains the same.

Since its inception until 2022, Complainant has generated a sales revenue of Rupees 1,004,188,00,000 (which is approximately USD 1,256,249,229). Complainant has provided the following table of sales since 2005:

S. No.	Year	Sales Consolidated India (INR Lakhs)
1.	2021-2022	249886
2.	2020-2021	158775
3.	2019-2020	143419
4.	2018-2019	112504
5.	2017-2018	80847
6.	2016-2017	74847
7.	2015-2016	60404
8.	2014-2015	46283
9.	2013-2014	37528
10.	2012-2013	18052
11.	2011-2012	9037
12.	2010-2011	5320
13.	2009-2010	3646
14.	2008-2009	2183
15.	2007-2008	1064
16.	2006-2007	362
17.	2005-2006	31

In order to promote its mark, Complainant has spent money in advertising and marketing. In the last decade, Complainant has spent in excess of Rupees 90,59,00,000 on sales and advertising expenses. Complainant has provided the following table of advertising and marketing expenditure by year:

S. No.	Year	Advertising and marketing Expenses Consolidated India (INR Lakhs)
1.	2021-2022	2,160
2.	2020-2021	1,085
3.	2019-2020	1,365
4.	2018-2019	953
5.	2017-2018	878
6.	2016-2017	1032
7.	2015-2016	719
8.	2014-2015	293
9.	2013-2014	240
10.	2012-2013	32
11.	2011-2012	36
12.	2010-2011	23
13.	2009-2010	44
14.	2008-2009	24
15.	2007-2008	4
16.	2006-2007	6
17.	2005-2006	4

Complainant has acquired statutory rights in its CITIUSTECH mark through registration of the mark in India and the United States. Complainant provided evidence of trademark registrations dating from March 2014 and October 2014 for India and the United States, respectively. For example, US trademark registration no. 4628676, CITIUSTECH, registered on October 28, 2014. The US trademark registrations both state a date of "first use in commerce" from 2005.

Complainant has received the following awards for its contribution in the healthcare industry:

- (i) CitiusTech was selected as finalist in the 2011 Stevie Awards in the category of "Fastest Growing Company of the Year - Up to 2,500 Employees". The American Business Awards, also known as the Stevie Awards, are the premier business awards program in the US.
- (ii) CitiusTech has been honored with the 2015 Stevie Award at the 13th annual American Business Awards in the category of "Most Innovative Tech Company of the Year".
- (iii) CitiusTech in 2015 has been recognized by the Great Place to Work Institute as one of the best companies to work for in India. This is the 4th year in a row that CitiusTech has received this award. CitiusTech also won the "Best Companies to Work" award in 2012, 2013 and 2014.

- (iv) CitiusTech was named as one of the “50 Most Promising IT Services Companies” by CIO Review, a US based healthcare technology publication.
- (v) Rizwan Koita, CEO of CitiusTech, has been awarded the Ernst & Young Entrepreneur of the Year award in 2013.
- (vi) CitiusTech was honored with the Best Indian Company in the United States in Technology & Communication by the Indo-American Chamber of Commerce at the 9th Indo-American Corporate Excellence Awards held in Mumbai.
- (vii) CitiusTech’s article on “A Structured Approach to Actionable Clinical Intelligence” was featured in the May 2013 issue of Group Practice Journal, the flagship publication of the American Medical Group Association.
- (viii) In the year 2011, CitiusTech won the Red Herring Top 100 North America Award for the leading private companies from North America, celebrating innovations and technologies across their respective industries.

Complainant is the owner of the domain name <citius.tech.com>, which it registered in 2005. The website at “www.citius.tech.com” provides information about Complainant and its operations. The website became active in 2005, prominently features the CITIUSTECH name and mark, and is accessible to people around the world.

The Domain Name was registered on March 18, 2008. It resolves to a website titled “Citius Technologies Indonesia” and includes the sub-heading “IT Solution Provider | Custom Software Development | System Integrator”. The website also provides reference to a portfolio of projects that Respondent has purportedly completed over time.

5. Parties’ Contentions

A. Complainant

- (i) Identical or Confusingly Similar

Complainant states that it has used the CITIUSTECH mark continuously, extensively and exclusively from the date of adoption until now. Since the beginning the mark has been featured as the brand name, corporate name and umbrella trademark for Complainant, one of the well-respected businesses in India and in the United States.

Complainant claims that the name and mark CITIUSTECH is synonymous with Complainant and its business across the globe and has acquired immense reputation and goodwill over the last ten years. Complainant states consumers around the world exclusively associate the mark with Complainant. The degree of recognition and association of the words “Citius” and “CitiusTech” with Complainant is evidenced by a Google search for “Citius/CitiusTech”, which reveals links predominantly to Complainant. Similar searches on other search engines such as YAHOO and BING yield links to Complainant.

Complainant states it has spent millions of US dollars each year to promote and advertise the mark around the world. Complainant contends its extensive global advertising, marketing and use of the mark has established its worldwide reputation and goodwill under common law. Complainant is presently using the CITIUSTECH mark in relation to its various services in India and the United States. Complainant asserts this conclusively proves the prior rights of Complainant in its mark. Complainant contends the information it has submitted establishes that Complainant is associated with the name CITIUSTECH and that it owns prior rights in the mark, not only through applications and registration of the trademark in United States and India, but also through common law rights acquired through continuous, exclusive and extensive use of

the mark in India and United States for around ten years.

Complainant submits the Domain Name comprises Complainant's prior and well-known mark and trade name in its entirety. Complainant's asserts its adoption, use and registration of the mark predates the registration of the Domain Name, and that the mark achieved global notoriety prior to the registration of the Domain Name and is immediately associated with Complainant's commercial activities and various businesses across the globe.

Complainant claims the Domain Name is identical to Complainant's well-known CITIUSTECH mark. Complainant contends that many UDRP decisions have held that incorporation of the trademark/trade name in its entirety into a domain name is sufficient to establish that the domain name is identical or confusingly similar to the mark. Respondent has merely added a hyphen between the words "citiustech" and "tech", and this addition does not change the visual and phonetic essence of the CITIUSTECH mark. On a bare comparison, Complainant contends the Domain Name appears confusingly similar. Thus, the difference in the Domain Name is without legal significance.

Complainant urges it is the consensus view that a domain name containing a common or obvious misspelling of a trademark will be found confusingly similar to the mark, where the misspelled mark remains the dominant or principal component of the domain name. The mark CITIUSTECH is an invented word. Further, Complainant claims that because the mark is well-known mark, it is likely that Internet consumers would believe there is an inevitable connection between the Domain Name and Complainant, since the public would mistakenly assume that Respondent's services originate from the same source as, or are associated with, the services of Complainant. The use of this mark either by itself or with slight variations does not serve any purpose for Respondent, but rather causes confusion and deception.

Accordingly, Complainant submits that the Domain Name should be considered identical and confusingly similar to Complainant's Mark.

(ii) Rights or Legitimate Interests

Complainant contends Respondent does not have any rights or legitimate interests in the Domain Name. It is matter of public record that Respondent registered the Domain Name on March 18, 2008, whereas Complainant has been running its websites and business under the CITIUSTECH marks for over fifteen years. Complainant alleges Respondent is illegitimately and fraudulently posing as Complainant and cheating people.

Complainant states that upon making an Internet search, it was found that Respondent is running a website linked to the Domain Name. From a review of the site, it appears Respondent is providing services that are similar to Complainant's services, *i.e.*, IT solutions, independent software, and application development, among others. Complainant argues Respondent is trying to create a false association with Complainant, and the public at large is likely to be confused into believing that Respondent is associated with or is a subsidiary of Complainant. Complainant asserts this shows that Respondent is taking undue advantage of Complainant's prior rights and goodwill in its CITIUSTECH mark.

Complainant states it holds prior rights in the CITIUSTECH mark and in its domain name <citiustech.com>. By virtue of the global nature of the services provided by Complainant under its domain name, which are accessible worldwide, its reputation traverses beyond the borders of any specific country. Thus, Respondent's use of the Domain Name, along with providing similar services and using the CITIUSTECH mark in the same manner as Complainant, shows the bad faith of Respondent in attempting to take advantage of the goodwill and reputation of Complainant.

Complainant states that Respondent is neither affiliated with Complainant nor has any authorization or license to register or use any domain name incorporating Complainant's mark. Instead, Respondent is free riding upon the goodwill and reputation of Complainant's well-known CITIUSTECH mark and providing similar services. Complainant asserts Respondent does not have any demonstrable interest in the CITIUS-

TECH mark and has wrongfully registered the Domain Name for the purpose of trafficking and fraudulent activities. Complainant alleges the illegality of the registration arises from the fact that domain names today are part and parcel of corporate identity. A domain name acts as the address of the company on the Internet and can be termed the web address or a web mark just like a trademark or service mark.

Complainant argues the sole purpose for registration of the Domain Name is to illegitimately profit from its association with Complainant. The Domain Name was registered only because of its recognition as Complainant's trademark. Therefore, Respondent cannot be said to have any legitimate rights in the Domain Name under the Policy because (i) the Domain Name was registered in 2008 after Complainant registered its CITIUSTECH mark, (ii) Respondent does not have any rights in CITIUS-TECH, nor has it been licensed by Complainant; and (iii) Respondent is providing services similar to those provided by Complainant under its CITIUSTECH mark and domain name <citustech.com>, thereby free riding on the goodwill and reputation of Complainant's mark. Such use does not amount to a fair use of Complainant's trademark. Many UDRP decisions have affirmatively held that the existence of the foregoing elements is sufficient to conclude the lack of legitimate rights in a domain name.

Complainant states there is no evidence that Respondent has registered the Domain Name as a trademark or acquired common law rights over the same. In addition, where Respondent is neither a licensee of Complainant nor has otherwise obtained authorization to use Complainant's mark, Respondent's lack of rights or legitimate interests is strongly indicated.

Complainant states that in previous UDRP decisions, panels have concluded that in the absence of any commercial relationship between the parties entitling a respondent to use a complainant's mark, the respondent did not have any right or legitimate interest in the domain name. A similar conclusion should be reached in this case, as Respondent's motive to register the Domain Name appears to be to trade off the immense recognition of the mark and cheat innocent members of public. In view of the above, Complainant submits it has established Respondent has no rights or legitimate interest in the Domain Name.

(iii) Registered and Used in Bad Faith

Complainant submits that Respondent registered the Domain Name, which is confusingly similar to Complainant's trademark, only for the purpose of squatting on Complainant's mark. Complainant urges that Respondent was well aware of Complainant's CITIUSTECH mark, as the Domain Name has been registered after Complainant's trademark registrations and applications for the mark. This shows that Respondent was aware of the commercial value of the name and proceeded to adopt it. Complainant contends that Respondent banked on the likelihood of consumer confusion to profit from the Domain Name.

Complainant further claims the facts support the conclusion that the primary purpose of registering and using the Domain Name is to take advantages of the goodwill and reputation of Complainant's mark. Respondent's use of the Domain Name constitutes bad faith because it demonstrates Respondent was aware of the significance of the mark and intended to take advantage of the goodwill of Complainant's mark. Complainant contends the Domain Name was registered in circumstances where Respondent must have known of Complainant's trademark rights, and the conclusion is inescapable that the Domain Name was registered because it would deceive the recipients of emails used in a scheme. Therefore, Respondent's registration and use of the Domain Name qualifies as bad faith within the meaning of paragraph 4(a)(iii) of the Policy.

Complainant contends Respondent's actions are nothing more than an attempt to profit from domain name grabbing and amounts to bad faith registration and use under the UDRP. In view of the foregoing, Complainant submits that Respondent's bad faith registration and use is established.

B. Respondent

Although Respondent did not submit a formal Response, Respondent did submit one email to the Center and one email to the Registrar. The first, on October 10, 2022, stated in relevant part:

"[T]his domain has been registered and used by our business since 2008 until now. We have the rights to use this domain since we are the first who registered it. No illegal intentions nor activities against the law.

Regards,

Citius Infotek Indonesia"

Respondent submitted a second message on October 19, 2022, albeit directed to the Registrar as follows:

"We are Citius InfoTek, a home based business consists of small team of freelancers who has been used this domain for email communications and project portfolio page only.

We have never heard citiustech healthcare products or services before and their products is not popular in our country.

We don't understand what those people want. They have had their own domain and still want ours or try to squeeze us?

As you know Citius is general word in greek or latin means: faster, and Tech is shorten word of technology(es).

We work on different industry, we don't have registered trademark or selling counterfeit products related to their products. We even have never been SEO-ing citius-tech to compete them. Domain citius-tech.com was available at the time we registered, as displayed by the available domains list on registration menu.

It was their fault to not purchase this domain or any combination of it, because everyone can use any available domains. I wish this kind of complaint is not the beginning of domain predatory of bigger company who driven by greedy people.

We would be happy If they can propose a win-win solutions.

Warm regards,

Citius InfoTek"

6. Discussion and Findings

In order to succeed on its Complaint, Complainant must demonstrate that the three elements set forth in paragraph 4(a) of the Policy have been satisfied. Those elements are as follows:

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

A. Identical or Confusingly Similar

The Panel determines that Complainant has demonstrated well-established rights in its distinctive CITIUSTECH trademark, through both registration in India and United States and use in its global commercial operations.

The Panel further finds that the Domain Name is confusingly similar to Complainant's CITIUSTECH mark. The Domain Name incorporates the CITIUSTECH mark in its entirety, with the only difference being the placement of a hyphen between the terms "citius" and "tech". This minor difference does not avoid confusing similarity. See WIPO Overview of Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.7 ("This test typically involves a side-by-side comparison of the domain name and the textual components of the relevant trademark to assess whether the mark is recognizable within the disputed domain name.").

In conclusion, the Panel finds that the Domain Name is confusingly similar to a trademark in which Complainant has rights in accordance with paragraph 4(a)(i) of the Policy. Accordingly, Complainant has satisfied the first element of the Policy.

B. Rights or Legitimate Interests

Pursuant to paragraph 4(a)(ii) of the Policy, Complainant must prove that Respondent has no rights or legitimate interests in respect of the Domain Name. A complainant is normally required to make out a *prima facie* case that the respondent lacks rights or legitimate interests. Once such *prima facie* case is made, the respondent carries the burden of production of demonstrating rights or legitimate interests in the domain name.

Here, the Panel finds that Complainant has initially made out a *prima facie* case. Complainant has indicated that Respondent has no legitimate interest in the confusingly similar Domain Name because it fully incorporates Complainant's CITIUSTECH trademark; that Respondent has no legitimate interest when the Domain Name falsely suggests affiliation with the trademark owner; that Complainant has not authorized, licensed, or otherwise permitted Respondent to use the CITIUSTECH trademark; and that Respondent has used the Domain Name to link it to a website offering services, some of which are similar to the technology offered by Complainant, in order to take advantage of the goodwill and reputation of Complainant.

In response to these allegation, Respondent has indicated that it has used the Domain Name since 2008 for its home-based business that consists of small team of freelancers. Respondent states the Domain Name has been used for email communications and providing a project portfolio page only on its website. Respondent further states that Respondent has never heard of Complainant or its products or services, and Complainant's products are not popular in the country where Respondent is located, Indonesia. Respondent also states the word "citius" means "faster" in Latin.

Having reviewed all of the evidence in this case, the Panel determines that Respondent has rebutted Complainant's case, for several reasons. First, Respondent registered the Domain Name in 2008, which is only three years after Complainant registered its domain name <citustech.com>. More importantly, despite Complainant's claims that it had a pre-existing trademark, Respondent registered the Domain Name six years before Complainant obtained its first trademark registrations in 2014 (in India and the United States). Complainant claims it started using its CITIUSTECH trademark in commerce in 2005; however, Complainant did not register a trademark until nine years later in 2014. Thus, even if Respondent had conducted a trademark search at the time the Domain Name was registered, Respondent would not have identified Complainant. Moreover, Complainant has claimed to have common law rights acquired through continuous, exclusive and extensive use of the CITIUSTECH mark in India and United States "for around ten years". Accepting this statement as true, this timeframe would reach back only to 2012, four years after the Domain Name was registered by Respondent.

Second, Complainant's own sales and marketing figures (noted above for India) show that Complainant's figures as of 2008 (when the Domain Name was registered) were fairly modest. There is no reason to believe that Complainant had achieved goodwill and reputation by 2008 that would have extended more globally such that Respondent would have been aware of Complainant.

Third, despite Complainant's conclusory allegations that Respondent targeted Complainant's CITIUSTECH mark, there is insufficient evidence in the record to support this claim. Instead, Respondent has denied this

allegation. Moreover, as noted by Respondent, the word “citius” means “faster” in Latin. This phrase is also part of the well-known Olympic motto: *Citius, Altius, Fortius* (Latin for “Faster, Higher, Stronger”). Therefore, unlike a completely made-up word, it is plausible that Respondent chose this word as appropriate for its IT solutions company.

Fourth, and finally, Complainant referred to the Internet Archive “Wayback Machine” to establish its use of the CITIUSTECH mark on its website at “citiustech.com” as early as 2005. The same website, however, shows that Respondent has been using the Domain Name since at least 2009 (*i.e.*, shortly after the registration of the Domain Name) for its company named “Citius Technologies” described at that time as an “Indonesian IT Solution Provider”. Respondent’s current website reads “Citius Technologies Indonesia” and also presents the name “CitiusTek”, while Respondent provides the same type of services. Respondent in its message to the Center also referred to itself as “Citius Infotek Indonesia”. The Wayback Machine thus shows that Respondent has been using the Domain Name consistently for at least 13 years (2009-2022) in relation to its IT business under the same or similar name. None of the numerous screenshots of Respondent’s site during that period demonstrates any targeting of Complainant or Complainant’s trademark. None of the screenshots of Respondent’s site suggests any fraudulent behavior on the part of Respondent. Therefore, although the record suggests that Complainant’s CITIUSTECH trademark has increased in strength, reputation, and goodwill over time, this is not enough to demonstrate Respondent’s lack of rights or legitimate interests in the Domain Name.

Accordingly, for all of the above reasons, the Panel finds that Complainant has failed to establish the second element of the Policy in accordance with paragraph 4(a)(ii).

C. Registered and Used in Bad Faith

For the reasons discussed under this and the preceding heading, the Panel determines that Respondent’s conduct in this case does not constitute bad faith registration and use of the Domain Name within the meaning of paragraph 4(a)(iii) of the Policy. On the balance of the probabilities, there is no evidence pointing to a finding that Respondent targeted Complainant’s CITIUSTECH mark when registering the Domain Name. Further, the Panel notes Respondent’s longstanding use of the Domain Name for its small-scale IT solutions business.

However, the Panel is careful to observe that these findings do not have any bearing on whether or not Respondent’s use of the Domain Name would amount to trademark infringement in any relevant jurisdiction; that would be a matter for a court to assess.

Accordingly, the Panel finds that Complainant has failed to establish the third element of the Policy in accordance with paragraph 4(a)(iii).

7. Decision

For the foregoing reasons, the Complaint is denied.

/Christopher S. Gibson/

Christopher S. Gibson

Sole Panelist

Date: January 16, 2023