

## **ADMINISTRATIVE PANEL DECISION**

### **CitiusTech Healthcare Technology Private Limited v. Rex Kersey Case No. D2022-3773**

#### **1. The Parties**

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

The Respondent is Rex Kersey, United States of America (“United States”), represented by Law Office of Dmitriy Chyrkin, Ukraine.

#### **2. The Domain Name and Registrar**

The disputed domain name <ciustech.com> 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 10, 2022. On October 10, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On October 11, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed 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 communication to the Complainant on October 27, 2022, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed an amended Complaint on October 31, 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 the Respondent of the Complaint, and the proceedings commenced on November 2, 2022. In accordance with the Rules, paragraph 5, the due date for Response was November 22, 2022. The Respondent sent several informal communications from the Registrar disclosed contact email address and another email address on October 12 and 14, 2022. On November 17, 2022, the Center sent to the Respondent an Identification of Respondent Communication. The Respondent confirmed to be the owner of the other email address on

November 17, 2022. The Center proceeded to panel appointment on November 24, 2022. The Respondent sent additional informal communications to the Center on November 24 and November 25, 2022.

The Center appointed Andrew D. S. Lothian as the sole panelist in this matter on December 2, 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. On December 6, 2022, the Panel issued Procedural Order No. 1 to the Parties pursuant to the Respondent's request on November 24, 2022 for an extension to the due date for the Response. Said Procedural Order invited the Respondent to file a Response on or before December 12, 2022, and invited the Complainant to comment within five days of receipt of the Response, being no later than December 17, 2022. The Respondent filed a Response on December 10, 2022. The Complainant filed a reply on December 16, 2022.

On December 19, 2022, the Complainant requested a period of suspension because the Parties were discussing settlement. On December 20, 2022, the Panel issued Procedural Order No. 2 to the Parties pursuant to the Complainant's request for a suspension of the proceedings. Said Procedural Order requested the Respondent's confirmation or objection to the Complainant's request for suspension, failing which the Panel would proceed to issue the decision on December 23, 2002. The Respondent filed a supplemental filing on December 21, 2022. On December 22, 2022, the Respondent intimated that it sought a brief extension period to facilitate discussions between the Parties. Accordingly, on December 23, 2022, the Panel extended the decision due date to December 28, 2002. On December 26, 2022, the Complainant purported to withdraw the Complaint after the commencement of the proceeding for the purpose of seeking a settlement with the Respondent. On December 27, 2022, the Panel intimated to the Parties that it would not permit the Complaint to be withdrawn unless it received confirmation that the Respondent had no objection to this course of action prior to 11:00 Geneva time on December 28, 2022, and otherwise would proceed to issue the decision. The Respondent did not confirm prior to the aforementioned deadline that the Respondent had no objection to the withdrawal of the Complaint. The Complainant filed a supplemental filing on December 28, 2022.

The Panel must ensure that the administrative proceeding takes place with due expedition in terms of paragraph 10(c) of the Rules. Sufficient time has already been allowed, notwithstanding the Parties' differing time zones and the time of year. In these circumstances, the Panel will proceed to a decision and no further filings will be accepted from the Parties.

#### **4. Factual Background**

The Complainant is an Indian company which operates in India, the United States, the United Kingdom, the United Arab Emirates, and Singapore. The Complainant provides consulting and digital technology to healthcare and life sciences companies internationally. The Complainant states that it adopted the mark CITIUSTECH as its brand name and logo in 2005. It used this mark as part of the name of the Complainant's United States subsidiary company, Citiustech, Inc., which was established on July 11, 2005.

The Complainant's business is substantial, having generated sales of USD 1,256,249,229 from 2005 to date. In the last decade, the Complainant notes that it has spent over INR 905,900,000 on advertising and marketing expenditure. The Complainant has received multiple industry awards for its contribution to the healthcare industry from about 2011 onwards.

The Complainant and its subsidiaries own several registered trademarks for the mark CITIUSTECH. For example, the Complainant's United States subsidiary is the owner of United States Registered Trademark No. 4628676 for the design and word mark CITIUSTECH, registered on October 28, 2014, in Classes 9 and 42. The Complainant is also the owner of the domain name <citiustech.com>, registered on May 18, 2005, which is used for the Complainant's website. Said website has been active since 2005.

The disputed domain name was registered on January 27, 2009. The Respondent is the owner and operator of a company named Cities Technologies LLC, which was incorporated in Minnesota, United States on October 2, 2008. According to the business record details provided by the Respondent, said company was originally named Rex Christopher Kersey LLC (presumably reflecting the Respondent's personal name) and changed its name to Cities Technologies LLC on December 3, 2009. The company is reported to be active and in good standing. A screenshot produced by the Complainant of the website associated with the disputed domain name is entitled "Cities Technologies, LLC Internet Hosting Services" and references the URL "www.securepaynet.net" with what appears to be an error message. Said website is otherwise blank.

## 5. Parties' Contentions

### A. Complainant

In summary, the Complainant contends as follows:

Identical or confusingly similar

The disputed domain name contains the Complainant's mark in its entirety, although the Respondent has substituted the letter "u" with the letter "e". This does not change the visual and phonetic essence of the CITIUSTECH mark. A domain name that contains a common or obvious misspelling of a trademark will be found to be confusingly similar thereto, where the misspelled trademark remains the dominant or principal component of that domain name. There is also a high likelihood of confusion between the disputed domain name and the Complainant's domain name. A deceptively similar variation of a trademark contained in a domain name is sufficient to establish identity or confusing similarity to that trademark. The CITIUSTECH mark is an invented word, and the use of a slight variation would not serve any purpose for the Respondent other than causing confusion and deception. As the mark is well known, and has achieved significant reputation and goodwill, it is likely that consumers would believe that there is an inevitable connection between the disputed domain name and the Complainant.

Rights or legitimate interests

It is a matter of public record that the Respondent registered the disputed domain name on January 27, 2009, whereas the Complainant has been running its website and business for over 15 years. The Respondent is illegitimately cybersquatting and does not even operate a website at the disputed domain name despite having registered the same in 2009. The Respondent has no purpose or intention of using the disputed domain name and is not making a *bona fide* offering of goods or services, nor making a fair use of the disputed domain name. The sole purpose for registration of the disputed domain name is to profit illegitimately from its association with the Complainant. The disputed domain name was registered only because of its recognition as the Complainant's trademark. The Respondent is neither a licensee of the Complainant, nor has obtained authorization of any kind to use the Complainant's mark, and the Respondent's lack of rights or legitimate interests in the disputed domain name is strongly indicated.

Registered and used in bad faith

It is submitted that the Respondent registered the disputed domain name, which is confusingly similar to the Complainant's mark, only with the purpose of cybersquatting. The primary purpose of registering and using the disputed domain name was to benefit from the goodwill and reputation of the Complainant's mark. The Respondent's use of the disputed domain name constitutes bad faith because it demonstrates that the Respondent was aware of the significance of the trademark. The Respondent's actions are nothing more than an attempt to profiteer from domain grabbing, amounting to bad faith registration and use under the Policy.

## B. Respondent

In summary, the Respondent contends as follows:

### General

The Complainant has abused this administrative proceeding in an attempt to rob the Respondent of its domain name. The Respondent is the owner and operator of Cities Technologies LLC, incorporated on October 2, 2008, per the business details supplied. The disputed domain name wholly incorporates the name of the Respondent's company. Moreover, "cities" is generic word. Common words and descriptive terms are legitimately subject to registration as domain names on a "first-come, first-served" basis. The disputed domain name was registered long before the registration of the Complainant's trademarks. The Panel should find that the Complainant has not carried its tripartite burden of proof under the Policy and find that the Complainant has engaged in Reverse Domain Name Hijacking.

### Rights or legitimate interests

The Respondent is a good faith registrant of the generic words "cities" and "tech", which are in wide use. The Respondent is the original registrant from January 2009 and has owned the disputed domain name for over 13 years. Where the domain name and trademark in question are generic, and in particular where they comprise no more than a single, short, common term, the rights/interests inquiry is more likely to favor the domain name owner.

### Registered and used in bad faith

The Respondent did not register the disputed domain name to prevent the owner of a trademark from reflecting that mark in a corresponding domain name but because the Respondent believed that the words used in the disputed domain name are generic and no-one has the exclusive right to use them. The Respondent did not intend to create a likelihood of confusion or to disrupt the Complainant's business. The Respondent did not have knowledge of the Complainant prior to the Complainant demanding the transfer of the disputed domain name. The Respondent is a good faith registrant of the disputed domain name.

The Complainant cannot prove registration in bad faith. The disputed domain name was registered before the Complainant's trademark proceeded to registration. The Respondent could not have entertained bad faith intentions regarding such mark because it could not have contemplated the Complainant's then non-existent rights at the moment the disputed domain name was registered. The Respondent has shown rights or legitimate interests in the disputed domain name. The issue of bad faith is moot once the Panel has found that the Respondent has such rights or legitimate interests.

The Respondent has not violated any of the factors listed in paragraph 4(b) of the Policy or engaged in any other conduct that would constitute bad faith registration and use pursuant to the Policy. Mere assertions of bad faith are insufficient for a complainant to establish this element of the Policy.

If the Complainant truly believed that the disputed domain name was being used in conflict with its trademark rights, it would have acted long ago. The Respondent has owned the disputed domain name since 2009. The Panel may consider the question of delay as additional evidence in the Respondent's favor. Delay in bringing proceedings is likely to place a higher burden on a complainant attempting to prove a state of affairs long ago. Taken together with the inherently descriptive character of the words comprising the disputed domain name, this is determinative of the matter.

### Reverse Domain Name Hijacking

The Complainant had no *bona fide* basis for commencing this proceeding and is culpable for reverse domain name hijacking, which occurs when a complainant knows there is no plausible basis for a complaint and it should have been apparent to it that it could not prove all the elements required by the Policy. The

Complainant must have known prior to the filing of the Complaint that its registered trademarks would provide it with no rights to a domain name that has been used by the Respondent in connection with a *bona fide* offering of services. The Complainant had to be aware that generic words would not have protection under the Policy. A finding of Reverse Domain Name Hijacking is appropriate.

### **C. Complainant's comments to Respondent's Response**

It is denied that the disputed domain name presents a case of Reverse Domain Name Hijacking. The Complainant is a legitimate business owner and has an extensive presence in India and in the United States where the Respondent is located, since 2005. The Complainant has continuously and extensively operated in the United States since 2005 under the trademark CITIUSTECH, and unregistered rights had been established prior to the Respondent's registration of the disputed domain name in 2009. The Complainant provides ample evidence in support of this assertion.

The Respondent acquired the disputed domain name approximately four years after the Complainant had been continuously using its marks in commerce throughout the United States. Thus, it is obvious that the Respondent had the Complainant's trademark in mind while adopting the disputed domain name. The Respondent's use of the disputed domain name is not *bona fide* and could not give rise to any right or legitimate interest because the Respondent knew or should have known of the Complainant's trademark rights at the point of registration of the disputed domain name.

Since the Respondent registered the disputed domain name, it has not operated any associated website nor has conducted any legitimate business thereby. The Respondent has been passively holding the disputed domain name. Passive holding may amount to bad faith where the Complainant's trademark has a strong reputation and is widely known, as evidenced by its substantial use, and the Respondent has provided no evidence whatsoever of any actual or contemplated good faith use by it of the domain name concerned. There is no evidence that the Respondent is commonly known by the disputed domain name. Passive holding does not comprise a legitimate noncommercial or fair use of the disputed domain name.

Courts in the United States have concluded that delay does not militate against injunctive relief in a trademark action and the remedies under the Policy are similarly injunctive, so that no defense of delay should apply.

## **6. Discussion and Findings**

In order to succeed in the Complaint, the Complainant must show that all three of the elements set out under paragraph 4(a) of the Policy are present, namely that:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
- (ii) the Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- (iii) the disputed domain name has been registered and is being used in bad faith.

### **A. Preliminary matters: late Response and Respondent supplemental filing**

On November 24, 2022, the Respondent requested an extension to the due date for filing the Response in order to seek legal counsel. The Complainant did not object to such request. Based upon the Respondent's informal email correspondence with the Center, the Panel was satisfied that the Respondent was making a genuine attempt to engage with the process, and merely required some further time to seek legal advice and then to file a formal Response.

The Panel must balance paragraph 10(c) of the Rules, whereby it shall ensure that the administrative proceeding takes place with due expedition, and may extend a period of time fixed under the Rules in exceptional cases, with paragraph 10(b) of the Rules, whereby the Panel must ensure that the Parties are treated with equality, and that each party is given a fair opportunity to present its case. In these circumstances, the Panel considered that it was reasonable to allow a short extension for the filing of the Response but that, by the same token, provision should be made for the Complainant to answer the Response if it wished to do so. For these reasons, the Panel issued Procedural Order No. 1 to the Parties as described above.

The Complainant's comments on the Response were received on December 16, 2022. Strictly speaking, this was a day later than required by the Procedural Order, which specified that any comments should be received within five days of receipt of the Response. Nevertheless, the Panel considered it reasonable to allow the comments to be received because they were a matter of hours late at most.

On December 21, 2022, the Respondent filed a supplemental filing in which it sought to reply to the Complainant's above-mentioned comments. The Panel determined that in order to avoid repeated filings of reply and counter-reply, and to render its decision expeditiously, it would have to draw a line under the Parties' submissions with those which were produced in response to Procedural Order No. 1. Supplemental filings, unless requested by the Panel in its sole discretion in terms of paragraph 12 of the Rules, are generally discouraged. Balancing paragraph 10(c) of the Rules against paragraph 10(b) of the Rules in this particular instance, the Panel determines that the Respondent has already received a fair opportunity to present its case, considering that the Respondent has been permitted to file its Response late. In these circumstances, the Panel declines to admit the Respondent's supplemental filing, and it will not be considered in this proceeding. For similar reasons, the Panel declines to admit the Complainant's supplemental filing of December 28, 2022, and it will not be considered in this proceeding.

## **B. Identical or Confusingly Similar**

The first element under the Policy is typically addressed in two stages. In the first place, the Complainant must demonstrate that it has UDRP-relevant rights in a trademark, whether registered or unregistered. In the second stage, the disputed domain name is compared to such trademark, typically on a straightforward side-by-side basis, in which the Top-Level Domain ("TLD") of said domain name (in this case, ".com") is usually disregarded as being only a technical requirement. Confusing similarity may be found if the trademark is recognizable within the domain name concerned, whether or not accompanied by other terms. Identity may be found if the trademark is identical to the domain name concerned (with the exception of the TLD), having disregarded any special characters which cannot be reproduced in a domain name.

The Panel finds that the Complainant has UDRP-relevant rights in its CITIUSTECH registered trademark. It is not relevant to the first element assessment that this registration post-dates the registration of the disputed domain name. Comparing the mark to the disputed domain name on the basis described above, it may be seen that this is alphanumerically identical to the mark, with the exception of a substitution of the letter "u" for the letter "e". Based upon this simple analysis, the Panel might have found confusing similarity on the basis of the fact that the letter substitution does not render the disputed domain name unrecognizable from the Complainant's mark on a letter by letter comparison.

However, the position is different on an aural and visual comparison. As the Panel hears it, the word "cities" is pronounced quite differently from "citus" and, indeed, the former is likely to be pronounced with two syllables ("cit-ies") while the latter is more likely to be pronounced with three syllables ("cit-i-us"). In terms of the visual appearance, it cannot be overlooked that the first part of the disputed domain name consists of the word, "cities", a familiar word to English speakers, while the corresponding part of the Complainant's mark is the Latin word "citus", meaning "swiftly". Due to their familiarity with the former, in contrast to the distinctive coined term, English speakers are likely to be able to distinguish between the disputed domain name and the Complainant's trademark on a visual comparison, even if unfamiliar with the Latin word, and would be unlikely to mistake the one as a typographical variant of the other. In any event, in light of its findings under the second and third elements of the Policy, the Panel does not require to reach a final determination on the

first element assessment.

### C. Rights or Legitimate Interests

Paragraph 4(c) of the Policy lists several ways in which the Respondent may demonstrate rights or legitimate interests in the disputed domain name:

“Any of the following circumstances, in particular but without limitation, if found by the Panel to be proved based on its evaluation of all evidence presented, shall demonstrate your rights or legitimate interests to the domain name for purposes of paragraph 4(a)(ii):

- (i) before any notice to you 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 (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 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 consensus of previous UDRP decisions under the Policy is that a complainant may establish this element by making out a *prima facie* case, not rebutted by the respondent, that the respondent has no rights or legitimate interests in the domain name concerned. Where the panel finds that a complainant has made out such a *prima facie* case, the burden of production shifts to the respondent to bring forward evidence of such rights or legitimate interests.

In the present case, the Complainant contends that it has been running its business for over 15 years, while the disputed domain name was registered just under 13 years ago. The Complainant contends that the Respondent does not operate a website at the disputed domain name despite having registered it in 2009, that it has no intention of using it, that it is not making a *bona fide* offering of goods or services or a fair use thereof, that the purpose of the disputed domain name is to profit illegitimately from an association with the Complainant, and that the Respondent is not a licensee of the Complainant, such that its lack of rights or legitimate interests in the disputed domain name is strongly indicated.

These submissions are sufficient in the Panel’s view to establish the requisite *prima facie* case. Accordingly, the Panel turns to the Respondent’s case to determine whether it has brought forward evidence of such rights or legitimate interests. The essence of the Respondent’s submissions and evidence is that it has rights and legitimate interests in the disputed domain name because it is an online representation of the Respondent’s company name, the company concerned having been incorporated on October 2, 2008. However, as a general rule, the mere incorporation of a company on its own does not lead to a finding of rights and legitimate interests under the Policy. The background to this interpretation is explained by the panel in *Royal Bank of Canada v. RBC Bank*, WIPO Case No. [D2002-0672](#) as follows:

“If the intention of the Policy were otherwise, every cybersquatter would be able to avoid the operation of the Policy by the simple expedient of: (i) quietly registering someone else’s trademark as a corporation name (possibly in some jurisdiction having no connection with either the trademark owner or the cybersquatter); (ii) waiting some decent interval of time before registering the corporation name as a domain name; and (iii) resisting the trademark owner’s challenge under the Policy by claiming that the fact of the registration of the corporation proves that the corporation has been ‘commonly known by’ the corporation name/trademark/domain name, and therefore has a legitimate interest in the domain name.”

What is needed, therefore, is something more substantial in the evidence supporting rights and legitimate interests than the mere incorporation of the entity concerned. In the present case, the Panel is satisfied that the evidence before it contains this “something more”. The record shows that Cities Technologies LLC was incorporated on October 2, 2008, adopted its present name on December 3, 2009, and has a current status

of Active/In Good Standing. This suggests that it is a trading entity that has remained on the register for almost 15 years, 13 of those under its current name. Indeed, the Response asserts that the Respondent provides a *bona fide* offering of services using this company, although it does not specify or provide evidence of exactly what services the company provides. A clue is however available from the screenshot provided by the Complainant, which suggests that the company is, or has been, engaged in the provision of Internet hosting services.

The Complainant argues that the disputed domain name has never been used by the Respondent for a website and that the Respondent has made no preparations to use it in connection with a *bona fide* offering of goods or services. Yet there is clearly some limited evidence from the Complainant's own screenshot, first, that some form of Internet hosting service either has been provided, or is intended to be provided, via the Respondent's website, and secondly that some type of secure payment service has previously been employed, albeit that the link is currently broken. Furthermore, as noted above, the Respondent has evidently incorporated a company corresponding to the disputed domain name that remains in an active status and in good standing, despite being created over a decade ago, a matter upon which the Complainant chooses not to comment. Meanwhile, despite having provided historic screenshots of its own website, the Complainant has chosen neither to provide such historic screenshots in respect of the website associated with the disputed domain name, nor to inform the Panel that none are available if that is the case, a matter that would have provided some support for its otherwise unsupported assertion that the disputed domain name has never been used.

In all of these circumstances, the Panel considers that there is a reasonably plausible, if somewhat thin, case that the Respondent has been commonly known by the disputed domain name before any notice to it of the dispute in terms of paragraph 4(c)(ii) of the Policy, and, a somewhat more tenuous case that it has used the disputed domain name (or has made demonstrable preparations use it) in connection with a *bona fide* offering of services in terms of paragraph 4(c)(i) of the Policy.

In any event, the longstanding nature of its corporate name and the alleged provision of services do not represent the entirety of the Respondent's case on this topic. The Respondent also points out that the disputed domain name represents the combination of two dictionary words, "cities" and "tech", asserting that it is legitimate for it to have selected these for use in the disputed domain name, and that it did not know of the existence of the Complainant when it did so. As is noted in section 2.10.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), in order to find rights or legitimate interests in a domain name based on its dictionary meaning, the domain name should be genuinely used, or at least demonstrably intended for such use, in connection with the relied-upon dictionary meaning and not to trade off third-party trademark rights.

In the present case, the Panel finds the composition of the disputed domain name to be reasonably descriptive of a technology company providing Internet hosting services to metropolitan areas. Furthermore, although the Respondent did not specify why it chose the plural "cities", the Panel cannot overlook the fact that the Respondent appears to be based either within or at least very close to the Twin Cities region of Minnesota, making this a particularly apt description. In these circumstances, the disputed domain name does appear to the Panel to be intended for use in connection with the relied-upon dictionary meaning.

It is not possible to leave this question, however, without considering whether this descriptive use is more probably the reason for the selection of the disputed domain name or whether the Respondent might have been seeking to gain some commercial advantage from an association with the Complainant's trademark. The Respondent denies any prior knowledge of the Complainant and notes that the Complainant's registered trademarks were not in existence when the disputed domain name was registered. It is true that the Complainant possessed no registered marks when the disputed domain name was registered at the beginning of 2009, but it is also the case that the Complainant's United States subsidiary had been in existence in that country for around three and a half years by the date of registration of the disputed domain name. However, while there is much information in the Complaint to establish that the Complainant has achieved a certain prominence in its particular field in recent years, there is insufficient information to suggest that it had established an unregistered trademark in the mark CITIUSTECH within the United States



by 2009, or that, even if it had, this would necessarily have come to the attention of the Respondent and be the real reason behind the Respondent's registration of the disputed domain name.

In all of these circumstances, the Panel finds that the Respondent has successfully rebutted the Complainant's *prima facie* case that the Respondent has no rights and legitimate interests in the disputed domain name and accordingly the Complainant has failed to carry its burden in terms of paragraph 4(a)(ii) of the Policy. The Complaint therefore fails.

#### **D. Registered and Used in Bad Faith**

For completeness, the Panel will also address the third element assessment. In order for the Complainant to establish the third element under the Policy, it must demonstrate that the disputed domain name has been both registered and used in bad faith by the Respondent. Evidence of registration and use in bad faith may be put forward on the basis of the non-exclusive circumstances listed in paragraph 4(b) of the Policy or by way of other relevant facts and circumstances. For the Complaint to succeed, both registration and use in bad faith must be demonstrated as this requirement of the Policy is conjunctive. Failure to demonstrate one such aspect would lead to failure of the Complaint as a whole.

In order for the Complainant to make out registration in bad faith, it must establish that the Respondent was aware of the Complainant's CITIUSTECH trademark at the point when the disputed domain name was registered and that the Respondent had the requisite abusive intent to target this. As noted in the preceding section, the Complainant is not in a position to rely upon its registered trademarks for this purpose as they were not in existence in 2009 when the disputed domain name was registered. While the Complainant asserts that it had incorporated a company in the United States which traded under the "Citiustech" brand from July 2005, there is insufficient evidence before the Panel to suggest that it had established an unregistered trademark in the term "Citiustech" by 2009, or that this would necessarily have come to the Respondent's attention when it registered the disputed domain name some three and a half years later.

For example, although the Complainant lists its total marketing expenses for "Standalone India" for the years 2005 to 2006, 2006 to 2007, 2007 to 2008, and 2008 to 2009 as INR 400,000 (approximately USD 8,800), INR 600,000 (approximately USD 13,600), INR 400,000 (approximately USD 10,250), and INR 2,400,000 (approximately USD 50,000) respectively, it does not specify whether any such marketing was carried out in the United States, and if so, what form this marketing took. Likewise, although the Complainant provides details of its revenues over the material period, it does not provide specific information regarding any sales in the United States. Indeed, while there is a section for "Consolidated India" figures for both revenue and marketing expenses, and a matching separate section for "Standalone India" figures, there are no numbers at all in the table either for revenue or marketing expenses in the "Consolidated India" section in the material period. Assuming that the United States figures would have appeared as part of the "Consolidated India" section, there is no evidence of any marketing spend having been made by the Complainant in the United States prior to the registration date of the disputed domain name.

The only other evidence relating to the prominence of the Complainant's "Citiustech" brand before its trademarks were registered consists of Internet searches and descriptions of the Complainant's industry awards. The Complainant provides current Google and Bing searches for "citiustech", in which the results relate to the Complainant. This does not tell the Panel anything about the brand's prominence in 2009, far less about the alleged establishment of a corresponding unregistered trademark. For example, the Complainant does not provide a historic Google search either for "citiustech" or for "citiestech" dating back to the period in question. While the Complainant provides details of its industry awards, the earliest of these dates from 2011, two years after the disputed domain name was registered.

Although the Complainant produces historic screenshots which show that its website was online from 2005, the extent and reach of that website at the material period is not known to the Panel. Accordingly, the Panel does not consider that the Complainant has shown that it had established an unregistered trademark in the "Citiustech" mark, or that such mark more probably than not had come to the attention of the Respondent at the material time. It is in this evidentiary context that the Parties' comments regarding the Complainant's

delay in bringing the present proceedings are relevant. Generally speaking, while mere delay between the registration of a domain name and the filing of a complaint neither bars a complainant from filing such case, nor from potentially prevailing on the merits, delays in filing a UDRP complaint may make it more difficult for a complainant to establish its case on the merits purely due to the difficulty in obtaining relevant evidence as a consequence of the passage of time (see section 4.17 of the [WIPO Overview 3.0](#)).

In addition to a failure to demonstrate the Respondent's awareness of the CITIUSTECH mark at the point of registration of the disputed domain name, the Complainant has also failed to establish on the balance of probabilities that the Respondent had the requisite abusive intent in registering the disputed domain name. As discussed in the preceding section, the disputed domain name consists of two ordinary English words, "cities" and "tech" (the latter being a frequently used abbreviation for "technology"). On the basis of the facts and circumstances in the present case, it is reasonable to infer that the Respondent could have come up with this name entirely independently of the Complainant and without any abusive intent. Equally, the Respondent subsequently incorporated a limited company corresponding to the disputed domain name which remains active and in good standing, and there is a suggestion that it has engaged in the provision of Internet hosting services under the relevant name. While the Panel would have preferred to know more about the activities of this company, there is sufficient on the present record to suggest that it is something more than a mere pretext for the Respondent cybersquatting on the CITIUSTECH trademark as is asserted by the Complainant.

Finally, the Panel discounts the Complainant's averment that the disputed domain name has been passively held since it was registered. This allegation is not supported by any evidence, such as, for example, an entry from the Internet Archive showing the absence of any historic screenshots. The screenshot that the Complainant has provided suggests at least some form of use has taken place. While only limited details are given on the site, the interest of the Respondent's company is at least disclosed, together with the suggestion that it provides Internet hosting services. Furthermore, while the Complainant asserts that its trademark has a strong reputation and is widely known, as evidenced by its substantial use, the Complainant has been unable to establish that this was the case, at least in the place where the Respondent is based, at the time when the disputed domain name was registered. It has likewise been unable to show that its then active website would have come to the Respondent's attention.

In light of the above analysis, the Panel is of the opinion that the Complainant has failed to prove on the balance of probabilities that the disputed domain name was registered in bad faith. Due to the conjunctive requirement in the third element, it is not necessary for the Panel to examine the question of use in bad faith in any greater detail.

In all of these circumstances, the Panel finds that the Complainant has failed to carry its burden in connection with the third element of the Policy.

#### **E. Reverse Domain Name Hijacking ("RDNH")**

The Respondent has requested a finding of RDNH in this case.

Paragraph 15(e) of the Rules provides that, if "after considering the submissions the Panel finds that the complaint was brought in bad faith, for example in an attempt at Reverse Domain Name Hijacking or was brought primarily to harass the domain-name holder, the Panel shall declare in its decision that the complaint was brought in bad faith and constitutes an abuse of the administrative proceeding". Paragraph 1 of the Rules defines RDNH as "using the Policy in bad faith to attempt to deprive a registered domain-name holder of a domain name." Typical examples of circumstances in which a finding of RDNH have been made are described in section 4.16 of the [WIPO Overview 3.0](#). Mere lack of success in a complaint is not in itself sufficient for a finding of RDNH.

The Panel does not consider that the Complainant brought the present Complaint in bad faith. Some indications that the Respondent might have rights and legitimate interests in the disputed domain name were available to it but the position was by no means conclusive. For example, the screenshot of the website

associated with the disputed domain name does mention the Respondent's limited company name but, at the same time, it does not in itself demonstrate that said company is an active trading entity and, indeed, might suggest otherwise given the partially incomplete nature of the site, the error message that is displayed, and the absence of any contact or registration details for the company concerned. Likewise, the disputed domain name is not held in the name of the Respondent's limited company but rather in the name of one of its principals, so that connection would have been less than immediately apparent to the Complainant once the Respondent's identity had been revealed by the Registrar.

Dealing with the Respondent's submissions on this topic in turn, the Respondent first notes that the Complainant must have known prior to the filing of the Complaint that its registered trademarks would provide it with no rights to a domain name that has been used by the Respondent in connection with a *bona fide* offering of services. As noted above, the question of whether a *bona fide* offering of services was being made in connection with the disputed domain name was not exactly clear from the associated website, other than the reference to Internet hosting services. Furthermore, although the Respondent's registration of the disputed domain name did indeed predate the registration of the Complainant's trademarks, the Complainant had a stateable subsidiary case that its rights may have been targeted based on the fact that it had been trading under the relevant name in the United States for a period before the disputed domain name was registered. The fact that the Complainant failed to support that case with sufficient evidence does not necessarily mean that it must have brought the Complaint in bad faith.

Secondly, the Respondent notes that the Complainant had to be aware that generic words would not have protection under the Policy. However, this statement is not entirely accurate. The use of dictionary words in a domain name that may correspond to a trademark is permissible under the Policy provided that such words are used solely in respect of the dictionary meaning and do not capitalize on the reputation and goodwill inherent in the Complainant's mark. The Complainant saw the disputed domain name as a close typographical variant of its mark and, while its suspicions were not ultimately borne out by the evidence before the Panel, it was likewise entitled to put the Respondent to the proof on the issue both of whether the Respondent used the disputed domain name in connection with its dictionary meaning and whether it was seeking to capitalize on the reputation of the Complainant's mark.

Accordingly, the Respondent's request for a finding of RDNH is denied.

## **7. Decision**

For the foregoing reasons, the Complaint is denied.

*/Andrew D. S. Lothian/*

**Andrew D. S. Lothian**

Sole Panelist

Date: December 28, 2022