

ADMINISTRATIVE PANEL DECISION

CitiusTech Healthcare Technology Private Limited v. Susan Stewart Susan Stewart
Case No. D2022-3775

1. The Parties

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

The Respondent is Susan Stewart Susan Stewart, United States of America (“United States”).

2. The Domain Name and Registrar

The disputed domain name <citiutech.com> (the “Domain Name”) is registered with Amazon Registrar, Inc. (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 Domain Name. On October 10, 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 (Whois Privacy Service) and contact information in the Complaint. The Center sent an email communication to the Complainant on October 13, 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 14, 2022.

The Center verified that the Complaint and 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 October 20, 2022. In accordance with the Rules, paragraph 5, the due date for Response was November 9, 2022. The Respondent did not submit any Response. Accordingly, the Center notified the Respondent's default on November 10, 2022.

The Center appointed Jon Lang as the sole panelist in this matter on November 17, 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

The Complainant is an Indian company. It operates in India, the United States, the United Kingdom, the United Arab Emirates, and Singapore, and is a leading provider of consulting and digital technology to healthcare and life sciences companies. CITIUSTECH is the registered trademark of the Complainant and features in its corporate name. The CITIUSTECH mark was first adopted by the Complainant as its brand name and logo in 2005 when the Complainant was established under the name Citius IT Solutions Private Limited. The CITIUSTECH mark was also used as the name of the Complainant's subsidiary in the USA, CitiusTech, Inc., which was established on July 11, 2005. The Complainant changed its name to CitiusTech Healthcare Technology Private Limited on October 10, 2015. The Complainant has been using the CITIUSTECH mark continuously and exclusively from 2005.

The Complainant has won a number of awards in recognition of its contribution to the healthcare industry. Apart from common law rights in the CITIUSTECH mark (see below), the Complainant (and its subsidiary, CitiusTech, Inc.), has also acquired registered rights through various trademark registrations (for CITIUSTECH) in India and the United States, such as United States Trademark Registration No. 86239450 (in the name of the CitiusTech, Inc), with a registration date of October 28, 2014 and Indian Trademark Registration No. 2700671 with a registration date of October 4, 2018. The Complainant is also the owner of the domain name <citius.tech.com>, the online location of the Complainant's main website which became active in 2005, and which prominently features the CITIUSTECH name and Mark and provides information about the Complainant.

The domain name in dispute (the Domain Name) was registered on November 7, 2021.

5. Parties' Contentions

A. Complainant

The following is a summary of the main assertions of the Complainant.

The Domain Name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights

The Complainant spends millions of dollars each year to promote and advertise the CITIUSTECH mark around the world. As a result, the CITIUSTECH mark has an established worldwide reputation and goodwill and therefore, as well as its registered rights, also has unregistered rights under common law.

The CITIUSTECH mark is synonymous with the Complainant and its businesses across the globe. It has acquired immense reputation and goodwill over the last 10 years and consumers around the world exclusively associate the Mark with CitiusTech business. The degree of recognition and association of the mark with the Complainant is evidenced by the fact that a GOOGLE search for "Citius/CitiusTech" predominantly reveals links

to the Complainant.

The Domain Name comprises the Complainant's prior and well-known CITIUSTECH trademark (and trade name) effectively in its entirety. The Respondent has merely removed the letter "s" which does not change the visual and phonetic essence of the CITIUSTECH mark. To a layman, the change is negligible. The Complainant's adoption, use and registration of the mark predate registration of the Domain Name. The CITIUSTECH mark (which is exclusively associated with the Complainant and immediately associated with the Complainant's commercial activities and various businesses across the globe) had achieved global notoriety prior to registration of the Domain Name.

A domain name which contains a common or obvious misspelling of a trademark will be found to be confusingly similar to such trademark where the misspelt trademark remains the dominant or principal component of the domain name. Incorporation of a trademark of a complainant in its entirety or a deceptively similar variation is sufficient to establish that a domain name is identical or confusingly similar to that mark.

There is a high likelihood of confusion between the Domain Name and the CITIUSTECH mark since the public would mistakenly assume that the Respondent's services originate from the same source as, or are associated with, the services of the Complainant.

The CITIUSTECH mark is an invented word. The use of the mark by itself or with a slight variation or in conjunction with any other word does not serve any purpose for the Respondent, but rather causes confusion and deception.

Because the CITIUSTECH mark is well-known and has achieved significant reputation and goodwill, it is likely that Internet users would believe that there is a connection between the Domain Name and Complainant.

The Respondent was well aware of the CITIUSTECH mark given that the Domain Name was registered subsequent to the Complainant's trademark registrations and applications.

The Respondent has no rights or legitimate interests in respect of the Domain Name

The Respondent has never used nor has any intention of using the Domain Name.

The Respondent does not have any prior or legitimate right in the Domain Name. The Respondent is illegitimately squatting on the Domain Name and is not operating any website associated with the Domain Name. This demonstrates the Respondent's *mala fide* intent to merely acquire the Domain Name with no purpose or intention of using it.

The Respondent neither operates a business nor any other organization under the Domain Name. The Respondent is not making any *bona fide* offering of goods or services.

The Domain Name was registered only because of its recognition as the Complainant's trademark and to illegitimately profit from its association with the Complainant.

The Respondent is neither known by the Domain Name nor has it been licensed by the Complainant, and there has been no apparent effort to make any noncommercial or fair use of it.

Use of a domain name that infringes a mark of a complainant for the purposes of confusing and deceiving the public, does not confer rights or legitimate interests.

Whilst a passive holding of a domain name, without additional factors, does not in itself lead to a conclusion of an absence of rights or legitimate interests, in combination with a course of deceit, such a conclusion can be reached.

Where a respondent is neither a licensee of a complainant, nor authorised, as is the case here, there will be a strong suggestion of lack of rights or legitimate interest. This should be the conclusion in this Complaint as the Respondent's motive in registering the Domain Name appears to be to trade off of the immense recognition of the CITIUSTECH mark and to cheat innocent members of public.

The Domain Name was registered and is being used in bad faith

The Respondent registered the Domain Name which is confusingly similar to the Complainant's CITIUSTECH mark for the purpose only of squatting on the mark and to use the Domain Name to cash in on the goodwill and reputation of the Complainant's mark.

The Respondent's use of the Domain Name constitutes bad faith because it demonstrates that the Respondent was aware of the significance of the CITIUSTECH mark which it clearly intended to exploit.

The Respondent's actions are nothing more than an attempt to profiteer from domain name grabbing and amounts to bad faith registration and use under the UDRP.

B. Respondent

The Respondent did not reply to the Complainant's contentions.

6. Discussion and Findings

There is an inconsistency between the date it is said the Domain Name was registered in the Complaint ("It is matter of public record that the Respondent registered the disputed domain name on January 27, 2009...") and the WhoIs information annexed to it; an apparent allegation that there was a "scheme" in which emails were sent to recipients who were deceived ("would deceive the recipients of the emails used in that scheme") even though there appears to be no evidence to support that assertion, an assertion which also seems inconsistent with what is said elsewhere in the Complaint; and a reference to "CITIESTECH" ("...the Respondent is not commonly known as or identified by "CITIESTECH"...), which the Panel assumes is a typographical error.

The Panel shall nonetheless proceed, and will rely on the assertions that appear consistent with supporting documentation.

The Policy

Paragraph 4(a) of the Policy requires a complainant to prove: (i) that a respondent has registered a domain name which is identical or confusingly similar to a trademark or service mark in which a complainant has rights; (ii) that the respondent has no rights or legitimate interests in respect of the domain name; (iii) that the domain name has been registered and is being used in bad faith. A complainant must prove each of these three elements to succeed.

A. Identical or Confusingly Similar

The Complainant is the owner of trademark registrations for the CITIUSTECH trademark. It no doubt has unregistered rights in the mark too. The Complainant clearly has rights for the purposes of the Policy.

Ignoring the generic Top-Level Domain (“gTLD”) “.com” (as the Panel may do for comparison purposes), the Domain Name comprises the CITIUSTECH trademark except that the letter “s” has been omitted so as to form the term “citiutech”. Accordingly, the CITIUSTECH trademark and the Domain Name are not identical and thus the issue of confusing similarity must be considered. Application of the confusing similarity test under the UDRP 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” (section 1.7 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”)). Section 1.7 of the [WIPO Overview 3.0](#) goes on to provide “[...] in cases where a domain name incorporates the entirety of a trademark, [...] the domain name will normally be considered confusingly similar to that mark for purposes of UDRP standing”.

The omission of the letter “s” does not alter the visual impression created by the Domain Name, *i.e.*, that it is identical to, or very closely similar to the Complainant’s CITIUSTECH trademark such that it could be mistaken for being identical. The CITIUSTECH trademark is thus recognizable within the Domain Name. To create such a visual impression (of identity) was no doubt the very purpose of the Domain Name. Given the omission of the letter “s”, the Domain Name and mark cannot be said to be identical, but the Domain Name is certainly confusingly similar to the Complainant’s CITIUSTECH trademark.

The Panel finds that the Domain Name is confusingly similar to the CITIUSTECH trademark for the purposes of the Policy and thus paragraph 4(a)(i) of the Policy has been established.

B. Rights or Legitimate Interests

By its allegations, the Complainant has made out a *prima facie* case that the Respondent lacks rights or legitimate interests in the Domain Name. Accordingly, the burden of production shifts to the Respondent to come forward with arguments or evidence demonstrating that it does in fact have such rights or legitimate interests. The Respondent has not done so and accordingly, the Panel is entitled to find, given the *prima facie* case made out by the Complainant, that the Respondent indeed lacks rights or legitimate interests in the Domain Name. Despite the lack of any answer to the Complaint, however, the Panel is entitled to consider whether there would be anything inappropriate in such a finding.

A respondent can show it has rights or legitimate interests in a domain name in various ways even where, as is the case here, it is not licensed by or affiliated with a complainant. For instance, it can show that it has been commonly known by the domain name or that it is 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.

Here, however, the Respondent is neither known by the Domain Name nor has it been licensed by the Complainant. Moreover, no use of the Domain Name (noncommercial or fair or otherwise) has been ascertained by the Complainant since its registration, and as to an absence of an intent to mislead (for commercial gain), the Respondent’s choice of Domain Name suggests the very opposite.

A respondent can also show that it is using a domain name in connection with a *bona fide* offering of goods or services. No “offering”, *bona fide* or otherwise has been ascertained but in any event, given that it seems clear that the Respondent set out to acquire a domain name that would create a misleading impression of association with the Complainant, any use at all of the Domain Name by the Respondent is unlikely to be considered *bona fide*.

The Respondent has sought to create an impression of association with the Complainant and has chosen not to attempt to justify his actions.

The Panel finds that the Complainant has fulfilled the requirements of paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy provides a number of non-exclusive scenarios which may evidence a respondent's bad faith. They include, for instance, a respondent registering a domain name in order to prevent an owner of the trademark or service mark to which it is said to be confusingly similar or identical, from reflecting the mark in question in a corresponding domain name (provided that the respondent has engaged in a pattern of such conduct). A respondent registering a domain name primarily for the purposes of disrupting the business of a competitor is another scenario, as is a respondent intentionally attempting to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with a complainant's mark as to the source, sponsorship, affiliation or endorsement of its website or of products or services on it.

The Complaint annexes the webpage to which the Domain Name resolves. It states that "This site can't be reached". It would appear that no positive use is being made of the Domain Name. Sometimes, particularly in these types of cases (*i.e.*, where it appears that no use is being made of a domain name), it is not possible for a complainant to demonstrate a precise literal application of one of the paragraph 4(b) scenarios. However, these scenarios are non-exclusive and simply illustrative, and thus other circumstances demonstrating that a respondent seeks to take unfair advantage of, or to abuse a complainant's trademark (such behaviour being broadly understood to constitute bad faith for the purposes of the Policy) are usually enough to establish this third limb of paragraph 4(a) of the Policy (even if not falling within one of the paragraph 4(b) scenarios).

The CITIUSTECH mark is an invented word. It is distinctive and well-known. The Domain Name is almost identical to it. There would seem little room for coincidence. Certainly none has been suggested, or other explanation for the registration of a misspelt version of the Complainant's well-known CITIUSTECH mark provided. The Panel is of the view that the Respondent knew of the Complainant and sought to create the impression of association by engaging in typosquatting – the deliberate but usually minor misspelling of another's trademark to mislead. This is exactly the sort of abusive conduct to which the Policy is directed, and is in and of itself evidence of bad faith. It is difficult to see how the Respondent would not appreciate that any use by it of the Domain Name would be anything other than inherently deceptive and likely to mislead Internet users into believing that the Domain Name, or any website or email address associated with it, was that of (or associated with) the Complainant.

The fact that no active use is being made of the Domain Name at present (and hence currently can be treated only as being passively held), does not prevent a finding of bad faith registration and use. Indeed, a passive holding of a domain name can support a finding of bad faith. UDRP panels must examine all the circumstances of the case.

Section 3.3 of the [WIPO Overview 3.0](#), provides:

"While panelists will look at the totality of the circumstances in each case, factors that have been considered relevant in applying the passive holding doctrine include: (i) the degree of distinctiveness or reputation of the complainant's mark, (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, (iii) the respondent's concealing its identity or use of false contact details (noted to be in breach of its registration agreement), and (iv) the implausibility of any good faith use to which the domain name may be put."

The Domain Name is confusingly similar to the well-known and distinctive CITIUSTECH trademark. Indeed, except for the omission of one letter, it is identical. No Response was filed or evidence of actual or contemplated good faith use provided. Indeed, any good faith use of the almost identical, inherently deceptive Domain Name would seem highly implausible. Initially, the Respondent could not be identified because it used a

privacy service. Whilst not in itself necessarily indicative of bad faith, in the circumstances of this Complaint, it is supportive of such a finding.

The Panel finds that there are circumstances suggesting that the Respondent has sought to take unfair advantage of the Complainant's CITIUSTECH trademark and/or abuse its mark and thus, for the purposes of the Policy, there is evidence of both registration and use of the Domain Name in bad faith. The passive holding of the Domain Name in the circumstances of this Complaint supports a finding of bad faith.

7. Decision

For the foregoing reasons, in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the Domain Name <cititech.com> be transferred to the Complainant.

/Jon Lang/

Jon Lang

Sole Panelist

Date: December 1, 2022