

ADMINISTRATIVE PANEL DECISION

Paul DiCocco v. Curtis Lee Mickunas / Curtis L. Mickunas / Curtis Mickunas
Case No. D2017-1982

1. The Parties

The Complainant is Paul DiCocco of Pasadena, California, United States of America (“United States”), represented by Karish & Bjorgum, PC, United States.

The Respondent is Curtis Lee Mickunas / Curtis L. Mickunas / Curtis Mickunas of Portland, Oregon, United States, self-represented.

2. The Domain Names and Registrars

The disputed domain names:

(a) <gianpaoloastrology.com>, <make-astrology-great-again.com>, <makeastrologygreatagain.org>, <paul-dicocco.com>, and <pauldicocco.com> are registered with GoDaddy.com, LLC;

(b) <gianpaolo-dicocco.com>, <gianpaolodicocco.com>, and <gianpaolo-dicocco-failed-predictions.com> are registered with PDR Ltd. d/b/a PublicDomainRegistry.com, and

(c) <gianpaolo.info> is registered with Cloud Group Limited (all these registrars are referred to collectively as the “Registrars”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on October 11, 2017. Later that day, the Center transmitted by email to the Registrars a request for registrar verification in connection with all the disputed domain names. On October 12, 2017, and November 11, 2017, the Registrars transmitted by email to the Center their verification responses disclosing registrant and contact information for the disputed domain names which differed from the named Respondent and contact information in the Complaint. The Center sent an email communication to the Complainant on October 16, 2017 providing the registrant and contact information disclosed by the Registrars and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed an amended Complaint on November 5, 2017, and a second amended Complaint on November 14, 2017.

The Center verified that the Complaint together with the amended Complaints satisfied the formal requirements of the Uniform Domain Name Dispute Resolution Policy (the “Policy”), 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 amended Complaints, and the proceedings commenced on November 23, 2017. In accordance with the Rules, paragraph 5, the due date for Response was set to December 13, 2017. The Respondent filed the Response followed by two successive (first and second) amended Responses with the Center all on December 12, 2017. The terms “Complaint” and the “Response” will hereinafter refer to the Complaint and amended Complaints, and the second amended Response, respectively, unless the specific context indicates otherwise.

The Center appointed Peter L. Michaelson as the sole panelist in this matter on December 19, 2017. 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. Due to exceptional circumstances, the due date for the Panel’s decision to be submitted to the Center was extended from January 2, 2018 to January 16, 2018.

4. Factual Background

As reflected in the registration records for the disputed domain names in the public Whois database, the following table indicates for each domain name: the specific Annex to the Complaint in which a copy of its registration record appears, when that domain name was registered and when that registration will either expire or has expired.

Domain Name	Annex to Complaint	Registration Date	Expiration Date
<gianpaolo.info>	1(a)	December 3, 2016	December 3, 2018
<gianpaoloastrology.com>	1(b)	February 7, 2017	February 7, 2018
<makeastrologygreatagain.org>	1(d)	February 10, 2017	February 10, 2018
<make-astrology-great-again.com>	1(e)	February 7, 2017	February 7, 2018
<pauldicocco.com>	1(f)	December 3, 2016	December 3, 2017
<paul-dicocco.com>	1(g)	February 8, 2017	February 8, 2018
<gianpaolodicocco.com>	1(h)	December 3, 2016	December 3, 2018
<gianpaolo-dicocco.com>	1(i)	March 24, 2017	March 24, 2018
<gianpaolo-dicocco-failed-predictions.com>	1(j)	April 15, 2017	April 15, 2018

A. The Complainant’s marks

(i) Unregistered (common law) “Paul DiCocco” and “GianPaolo DiCocco” marks

The Complainant’s name is Paul DiCocco. He also trades under the pseudonym GianPaolo DiCocco. He uses both in connection with his business as an astrologer. While neither his personal name nor his trade name has been registered as a trade/service mark, the Complainant, based on prior use, claims common law trademark rights and thus exclusivity in both his name and trade name.

(ii) “MAKE ASTROLOGY GREAT AGAIN” registration

The Complainant owns a single US service mark registration for the phrase “MAKE ASTROLOGY GREAT AGAIN” (in block letters). The Complainant has provided in Annex 9 to the Complaint a copy of this

registration, of which salient details are as follows.

MAKE ASTROLOGY GREAT AGAIN; United States Registration No. 5,296,392; Registered on September 26, 2017; filed on March 8, 2017.

This mark is registered for use in connection with the service of: "Astrology consultation" in international class 45. This registration claims that, in connection with this service, this mark was first used and first used in commerce on March 15, 2016.

B. The Parties and their Interactions

The Complainant is an astrologer who primarily markets his services online. Typically, a customer will contact the Complainant and provide certain information to which the Complainant will then apply astrological principles and provide the customer with a written astrological chart.

The Respondent is a "locational" astrologer and has been one for nearly 30 years.

As noted in the Complainant's declaration (a copy of which appears in Annex 8(a) to the Complaint), during 2013, the Complainant apparently desired to commence a career of his own as an astrologer and sought out the services of the Respondent. He received an astrological "reading" from the Respondent through which the Respondent advised the Complainant to relocate to the San Francisco area. As a result, the Complainant then relocated to that area. However and shortly thereafter, he apparently became disenchanted with his move. According to the Respondent, the Complainant, while in the San Francisco area, experienced "troubles with roommates", "run-ins with the law" and a continuation of a "quarrelsome life", and, thus requested and received, consistent with the Respondent's refund policy, a refund of the entire USD 250 fee he previously paid to the Respondent for the "reading".

Starting in or about April 2016, the parties had a falling out. Specifically, the Complainant, presumably because of the negative experiences he had in the San Francisco area and possibly exacerbated by his astrological career there not progressing as fast as he expected, then began criticizing the Respondent, his reputation and competence as an astrologer. The Complainant did so through posting his own videos having critical content, on YouTube. The Respondent then replied in kind, both defending himself and also criticizing the Complainant, his reputation and his competence. Over the next year and a half and continuing to the present, each of the parties, through social media (such as through YouTube, Twitter, and Facebook) mounted successive reciprocal personal attacks against the other which increased in hostility and intensity. These attacks eventually grew to levels which to the Panel appear to be offensive and against generally-accepted contemporary societal norms.

Between December 2016 and April 2017, the Respondent, seeking to defend himself against the attacks then being levied against him and their increasing fervor, registered all the disputed domain names. The Respondent stated, in the Response, his rationale for having done so:

"The disputed domains were gradually purchased by me defensively, as DiCocco's slanders heated up, nearly a year after he started his business. The purpose was to deconstruct his self-erected authority and question the legitimacy of his statements, hopefully blunting his negative impact on my business by showing prospective clients, and the public, my side of things. The domains would allow me to place responses in close association with his negative content in search results...I gradually acquired these domains, apparently of no interest to the Complainant before, defensively as a way to control the damage propagated by the Complainant, by having a place to answer his attacks that stayed close to his content in search results. Furthermore, I place content at these domains which deconstructs the Complainant's authority to attack and delegitimizes the attacks. I don't concoct stories about him (as he does about me). Most of the material for these defensive purposes consists of reproducing the Complainant's own posts and statements in various instances from the internet."

With respect to the disputed domain names <gianpaoloastrology.com>, <makeastrologygreatagain.org>, and <make-astrology-great-again.com>, the Respondent states that none of these domain names is active and he does not currently use any of them.

Regarding <pauldicocco.com> and <gianpaolo.info>, the Respondent acknowledges that these particular domain names are active. The domain name <pauldicocco.com> resolves to a website, operated by the Respondent, that provides content which identifies individuals, whom the Respondent views as “notable”, named Paul DiCocco but who are not the Complainant (screen shots of pages from this website appear in Annex 10(c) to the Complaint). Similarly, the domain name <gianpaolo.info> resolves to another website, operated by the Respondent, that provides content which identifies individuals, whom the Respondent views as “notable”, named GianPaolo but who are not the Complainant.

As to <paul-dicocco.com>, the Respondent states that this domain name is also not active and one that he is not currently using.

As to <gianpaolodicocco.com> and <gianpaolo-dicocco.com>, the former domain name is neither used by the Respondent nor is it active at all. However, the Respondent uses the latter domain name to resolve to another of his websites where he posts content critical of the Complainant (screen shots of pages from this website appear in Annex 10(a) to the Complaint). He uses the disputed domain name <gianpaolo-dicocco-failed-predictions.com> to resolve to a further one of his websites (screen shots of pages from this site appear in Annex 10(b) to the Complaint) where he posts critical content specifically regarding astrological-based predictions which the Complainant has made and with which the Respondent takes issue.

5. Respondent’s partial consent to name transfer

Through the Response, specifically “Section IV Partial Consent to Remedy”, the Respondent consented to a partial transfer by stating: “I, the Respondent, consent to the part of the remedy requested by the Complainant, that is in the cases of these three (3) domains, only: <MakeAstrologyGreatAgain.org>, <Make-Astrology-Great-Again.com> and <GianpaoloAstrology.com>.”

As the Complainant requested transfer of all nine disputed domain names, the Panel will treat the Respondent’s statement as consenting to transfer of these three disputed domain names only.

In the same section of the Response, the Respondent subsequently took a somewhat inconsistent position by stating that he was agreeing to cancellation, which itself is a remedy available under paragraph 4(i) of the Policy separate from transfer: “I agree to cancel these disputed domain name; renounce ownership of them”. Cancellation simply places a domain name back into the public domain after its registration expires, such that any entity including a prior respondent-registrant, could then register the name. The Panel, based on the Respondent’s express sentiment that he “renounce[s] ownership” of these three names and thus has no intent in re-registering any of them, views this expression as implicitly ratifying his consent to the Complainant’s request to transfer these names.

Consequently, the Panel will simply order these three disputed domain names transferred without any need to discuss them any further below. Accordingly, the discussion in the next two sections of this decision will only address the remaining six domain names in dispute.

6. Parties’ Contentions

A. Complainant

(i) Identical or Confusingly Similar

The Complainant contends that each of the six remaining disputed domain names is confusingly similar to either his name (Paul DiCocco) or his trade name (GianPaolo DiCocco), in both of which he is claiming common law trademark rights through prior use.

Specifically, the Complainant, through his declaration, states that he conducts his business under his trade name which is based on his personal name. He further states that he has been doing so since on or about December 31, 2015 when he first posted his Facebook page under that trade name. He further notes, in his declaration, that he has 1,400 Facebook “likes”; 1,550 Facebook followers, and over 9,000 subscribers to his YouTube videos.

The Complainant contends that through this use, with respect to the market for astrological services, both his trade name and personal name have become sufficiently distinctive identifiers of his services in that market such that both have acquired exclusive common law trademark rights.

Given these rights, the Complainant claims that each of the six remaining disputed domain names contains either his personal name (in the case of <pauldicocco.com> and <paul-dicocco.com>) or his trade name (in the case of: <gianpaolodicocco.com>, <gianpaolo-dicocco.com> and <gianpaolo-dicocco-failed-predictions.com>), or a sufficiently formative portion of the latter (<gianpaolo.info>) as to cause confusion of Internet users between the domain name and the corresponding common law mark.

Hence, the Complainant believes that it has satisfied the confusing similarity/identity requirement in paragraph 4(a)(i) of the Policy.

(ii) Rights or Legitimate Interests

The Complainant contends that the Respondent has no rights or legitimate interests in any of the six remaining disputed domain names pursuant to paragraphs 4(a)(ii) and 4(c) of the Policy.

Specifically, the Complainant merely asserts that the Respondent has no reason to use any of these names, pointing to the Respondent’s content posted at the Respondent’s websites (as provided in Annexes 10(a)-(c) to the Complaint) as apparently, due to its particularly vituperative nature, not reflecting legitimate noncommercial or fair use of the names consistent with paragraph 4(c)(iii) of the Policy.

(iii) Registered and Used in Bad Faith

The Complainant also contends that the Respondent has registered and is using each of the six remaining disputed domain names in bad faith in violation of paragraph 4(a)(iii) of the Policy.

As the Respondent registered all the disputed domain names (not just the six remaining names) after the parties had a falling out, then the only purpose he had in doing so was to disrupt the Complainant's business in violation of paragraph 4(b)(iii) of the Policy. In that regard, the Complainant points to certain derogatory content on the Respondent’s websites accessible through <gianpaolo-dicocco.com> and <gianpaolo-dicocco-failed-predictions.com> in support of his view.

Paragraph 4(b)(iii) of the Policy requires that for bad faith to occur, a respondent must have registered a domain name “primarily for the purpose of disrupting the business of a competitor”. While the parties do not directly compete, the Complainant advocates for a broad interpretation of the term “competitor” to encompass anyone, such as the Respondent, who, through the content which he sets forth on his websites, “opposes” the Complainant.

B. Respondent

(i) Identical or Confusingly Similar

The Respondent states that apart from the domain names <makeastrologygreatagain.org> and <make-astrology-great-again.com>, none of the other disputed domain names has any similarity to the Complainant's registered trademark.

(ii) Rights or Legitimate Interests

In contrast to the Complainant's view, the Respondent contends that he has rights and legitimate interests in each of the six remaining disputed domain names because "the Complainant has deliberately targeted his [Respondent's] reputation and income using these names and terms, and blocked all self-defense by the Respondent via other channels", and thus the Respondent's use of all these domain names to defend himself against the Complainant's harsh criticism constitutes fair use.

The Respondent further contends that his use of all these domain names is noncommercial. In that regard, the Respondent notes that he intentionally omitted including any links to his own business websites on any of the corresponding active websites to which the six remaining disputed names resolves.

(iii) Registered and Used in Bad Faith

As to bad faith, the Respondent stridently disagrees with the Complainant's contentions. Specifically, the Respondent contends that none of the indicia of bad faith set forth in paragraph 4(b) of the Policy exists here.

The Respondent acquired the disputed domain names only after the Complainant began personally attacking the Respondent. Then and only out of necessity, the Respondent used these domain names defensively to blunt the effects of those attacks by posting content on the Respondent's website opposing that provided by the Complainant on social media. The Respondent's purpose in doing so was not to disrupt or harm the business of the Complainant – as both parties serve different astrological specialties, but rather to protect and preserve the Respondent's own business. This action does not reflect bad faith registration and use of the names.

Also, the Respondent has made no effort to sell any of these domain names.

Further, the Respondent states that his website accessible through <gianpaolo-dicocco-failed-predictions.com> is clearly used to provide criticism of the Complainant, including critical evaluations of his claims as an astrologer. Content at that site details the astrological-based predictions which the Complainant made but which did not ultimately occur.

7. Discussion and Findings

A. Identical or Confusingly Similar

The Panel finds that each of the disputed domain names is either identical or confusingly similar to the Complainant's common law marks "Paul DiCocco" and "GianPaolo DiCocco".

As a general matter, the Policy does not contain any restriction that specifically limits its reach to only registered marks. Therefore, given the apparent inclusive nature of the Policy, whether the Complainant has rights to his unregistered marks and hence standing under the Policy, lies with federal (United States) trademark law. For a more general discussion of UDRP-relevant rights in a personal name, and for what typically needs to be shown for a complainant to successfully assert common law or unregistered trademark rights under the Policy, see sections 1.1.1 and 1.3 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("WIPO Overview 3.0"). Under United States law, rights accrue in unregistered, so-called "common law", marks as a result of usage, though limited by geographic and product/service markets in which the mark is used. As evidence of this, one need turn no further than to §43 of the Lanham Act (15 U.S.C. §1125(a)) which states, in pertinent part:

“Any person who, on or in connection with any goods or services, or any container for goods, uses in commerce any word, term, name, symbol, or device, or any combination thereof...which (A) is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of such person with another person shall be liable in a civil action by any person who believes that he or she is or is likely to be damaged by such act.”

Numerous UDRP panels, including this one, when faced with unregistered marks, have upheld their protectable status in the United States and other jurisdictions under the Policy. See *Jelani Jenkins v. Amy Lewis*, WIPO Case No. D2014-0695; *S.N.C. Jesta Fontainebleau v. Po Ser*, WIPO Case No. D2009-1394; *Fairview Commercial Lending, Inc. v. Aleksandra Pesalj*, WIPO Case No. D2007-0123.

Given that common law trademark rights in the United States suffice for purposes of invoking paragraph 4(a)(i) of the Policy, the inquiry shifts to whether the Complainant had acquired common law trademark rights in his personal name “Paul DiCocco” and his trade name “GianPaolo DiCocco” by virtue of the fact that those marks have been sufficiently used so as to have acquired requisite distinctiveness and thus secondary meaning as source identifiers of the Complainant’s services.

Under the facts of record, the Panel finds that the Complainant’s use of his personal name and trade name were sufficient, within the Complainant’s industry, for him to have accrued common law trademark rights in both – which the Respondent does not dispute, indeed he would not likely have registered them had he felt they had source-identifying capacity – commencing during 2016 in connection with rendering services as an astrologer, with those rights continuing to the present.

In light of the Complainant’s trademark rights, the analysis shifts to assessing whether each of the remaining disputed domain names is either identical or confusingly similar to either of the Complainant’s marks.

From a simple comparison of each of the six remaining disputed domain names to the Complainant’s marks “Paul DiCocco” and “Gianpaolo DiCocco”, no doubt exists that each of these names is either identical or confusingly similar to it. This comparison ignores all third-party use of any of these marks. With respect to the names <pauldicocco.com> and <gianpaolodicocco.com>, each of these names is identical to its corresponding mark, with the sole addition being the appending of the generic Top-Level Domain (“gTLD”) “.com” to the mark – an addition which is irrelevant in this case for purposes of assessing confusing similarity or identity under paragraph 4(a)(i) of the Policy.

The names <paul-dicocco.com> and <gianpaolo-dicocco.com> are simply hyphenated versions of the marks, again ignoring the gTLD. The other two disputed domain names <gianpaolo.info> and <gianpaolo-dicocco-failed-predictions.com>, are each formed by either having omitted portions of the mark – in the former excluding “DiCocco” from GianPaolo DiCocco – or appending additional though generic terms to the mark – in the latter adding “failed predictions”. The Panel views each of these alterations as a minor variation which is insufficient to confer requisite and sufficient distinctiveness on the resulting domain name to avoid user confusion with the corresponding mark. See, e.g., *ZB, N.A., a national banking association, dba Amegy Bank v. Alexandria Herrera*, WIPO Case No. D2017-1408; *SAP SE v. Lakshmi Reddy Bhumireddy and P. Hareesh*, WIPO Case No. D2017-0396; *Compagnie Générale des Etablissements Michelin v. Cameron Jackson*, WIPO Case No. D2016-2392; *Kumfs Brand Limited v. George*, WIPO Case No. D2016-1272; *Dubizzle Limited BVI v. Rana Anabtawi*, WIPO Case No. D2016-0843.

Hence, the Complainant has satisfied its burden under paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

Based on the evidence of record, the Panel finds that:

(a) with respect to five of the remaining six disputed domain names, specifically <gianpaolo.info>, <pauldicocco.com>, <paul-dicocco.com>, <gianpaolodicocco.com> and <gianpaolo-dicocco.com>, no basis

exists which would appear to legitimize a claim of rights or legitimate interests by the Respondent to each of these disputed domain names under paragraph 4(c) of the Policy; but

(b) the Respondent has rights and legitimate interests in the sixth disputed domain name, <gianpaolo-dicocco-failed-predictions.com>.

Of the illustrative grounds enumerated in paragraph 4(c) of the Policy for proving the existence of rights to and legitimate interests in a domain name, only one such ground is applicable here and is that which the parties argued, specifically whether the Respondent's use of the six disputed domain names constitutes, under paragraph 4(c)(iii) a legitimate noncommercial or fair use. As all the other grounds are inapplicable, the Panel will not address them.

The core issue here is whether, under the present facts of record, the Respondent's specific use of these domain names as addresses to his complaint websites (at least those names which are in active use) that provide content critical of the Complainant is legitimate and thus their use constitutes fair use permissible under paragraph 4(c)(iii).

As a threshold matter, any use alleged to be a fair use under paragraph 4(c)(iii) must not be motivated by commercial gain, but rather must be genuine and not a pretext for cybersquatting, commercial activity or tarnishment. See section 2.6.1 of WIPO Overview 3.0. For example, if a domain name owner-user were to post derogatory content on its website in order to commercially exploit its intended target by offering to take the content down in exchange for a monetary payment from the targeted entity, that conduct would very likely be illicit and hence the use would not likely constitute a fair use under the Policy.

It is undisputed that the Respondent received no commercial gain from his use of these six names.

However, what both parties here may not fully appreciate is just how narrow the permissible review is of an UDRP panel in determining whether use of a domain name, in conjunction with a complaint website that provides critical speech, constitutes fair use.

Whether criticism is legitimate under paragraph 4(c)(iii) is governed, not by the nature of the content itself, but rather by a respondent's purpose and intent in posting that content. Simply stated, the Panel views the proper inquiry to be made as not what a respondent specifically said through the content it posted – as long as the content contains criticism, but rather why did that respondent say it. If the content contains criticism and the purpose in posting that content is legitimate, then the use of the associated domain name is fair use under paragraph 4(c)(iii) without any further examination of the specific content itself. Alternatively, if the purpose is illegitimate, then the use of the domain name does not fall within the fair use provision of paragraph 4(c)(iii). In either instance, the specific nature and extent of the criticism is irrelevant for purposes of assessing fair use. As such, the Panel does not evaluate critical content, other than just its presence, from the standpoint of its objectivity, accuracy, intensity or even whether it is likely to offend its intended target or audience or is composed of what might constitute personal attacks or even societally unacceptable speech. Should the target of that content find it defamatory or otherwise legally objectionable, appropriate redress does not lie with a UDRP panel – as the power to regulate speech lies well outside the jurisdiction of the panel – but rather through a suitable judicial forum applying pertinent federal and/or state laws.

Accordingly, though the Panel noted its view above that some of the Respondent's criticisms of the Complainant are offensive and societally unacceptable, this view is irrelevant in determining whether use of domain names that point to websites containing criticism qualifies as legitimate fair use. Consequently, the Panel's focus shifts to assessing the legitimacy of the Respondent's intent and purpose in providing content critical of the Complainant in the specific manner he did.

Here, the Respondent registered multiple domain names, each of which is either identical or confusingly similar to one of the Complainant's marks, specifically <gianpaolo-dicocco.com>, <pauldicocco.com> and <gianpaolo.info>, <paul-dicocco.com> and <gianpaolo.info>. The first three of these names are currently in use; the other two are inactive.

After considering the totality of the circumstances here, the Panel finds the Respondent's intent and purpose behind this conduct is illegitimate, thus precluding his use of these specific names as constituting a fair use under paragraph 4(c)(iii).

Specifically, by employing multiple domain names as addresses of his simultaneously available complaint sites where each of those names is either identical or confusingly similar to one of the Complainant's marks, the Respondent significantly and intentionally increases the potential to cause confusion of Internet users. The confusion arises in that such a user, upon seeing any such domain name, might reasonably think that an affiliation, sponsorship or other relationship of some sort exists between the Complainant and the Respondent when, in actuality, no such connection exists at all. By proceeding as he did, the Respondent did not establish just a single complaint website through which he posted criticism and a single channel for Internet users to reach that criticism, but rather an assemblage of separate complaint sites accessible through different corresponding domain names. These complaint sites cumulatively provide multiple, independent, simultaneously available channels through which more Internet users could experience confusion and be diverted to the Respondent's content than would occur through just a single such site accessible through a single domain name, thus increasing the likelihood that confusion would occur.

It is quite reasonable to assume, under well-known naming conventions, that an Internet user desirous of seeking information on the Complainant from his website, but not then knowing the address of that site, will very likely form a domain name that would contain the Complainant's mark, whether it be the Complainant's personal name or trade name, followed by a gTLD (in the form of <mark.TLD>), and then enter the resulting name into his/her browser with the expectation of successfully reaching the Complainant's website.

By employing multiple domain names, each exploiting the Complainant's marks, that simultaneously resolve to multiple complaint websites, an Internet user, seeking the Complainant's website and unbeknownst to him/her at the time, is presented with an enhanced probability of reaching one of the Respondent's complaint sites, rather than the Complainant's website, simply by virtue of having entered any one of multiple domain names. The same result would occur if alternatively just several of the multiple domain names were set to resolve to a single complaint site rather than separate corresponding complaint sites – though the Respondent did not follow this alternative approach here. The Respondent also deliberately enhances the probability of deceiving Internet users by having specifically registered typosquatted variants of the Complainant's marks, *i.e.* the hyphenated versions <paul-dicocco.com> and <gianpaolo-dicocco.com>, and actually using one of them to resolve to one of his complaint sites. Thus, the Respondent, by enhancing the probability that confusion will occur, illicitly and likely increased the cumulative Internet traffic which will be exposed to his complaint sites over that which would otherwise occur through use of just a single complaint site – this likely being the overall purpose and intent behind the Respondent's actions.

The Respondent could have used multiple domain names, even ones containing the Complainant's marks, in a legitimate manner to provide simultaneous access to multiple complaint sites if he did so in a fashion that was not likely to confuse Internet users. One approach to possibly accomplish this would have been for the Respondent to have incorporated an additional term(s), such as one that is derogatory or negative in nature, into each such domain name to clearly inform an Internet user, just from the name itself, that the website to which the name resolves provides content critical of the Complainant and, due to the negative connotation provided by the domain name, is very unlikely to have any relationship with the Complainant or its website. See, *e.g.*, Section 2.6.1 of WIPO 3.0. The Respondent employed just this exact approach when forming the sixth disputed domain name <gianpaolo-dicocco-failed-predictions.com>, where he appended the negative terms "failed predictions" to the Complainant's mark Gianpaolo DiCocco to form the name. The Panel views the Respondent's use of this particular disputed domain name as an address to his corresponding complaint site as legitimate for the simple reason that the name clearly identifies the nature of the content provided by that website and thus will not likely cause any confusion.

Consequently, the Respondent, by failing to use the disputed domain names <gianpaolo.info>, <pauldicocco.com>, <paul-dicocco.com>, <gianpaolodicocco.com> and <gianpaolo-dicocco.com> consistent with the requirements of the fair use exception under paragraph 4(c)(iii) of the Policy, has no rights or

legitimate interests in any of these five disputed domain names. In contrast, the Respondent has satisfied that exception with respect to the disputed domain name <gianpaolo-dicocco-failed-predictions.com> and accordingly has legitimate rights and interests in that name.

C. Registered and Used in Bad Faith

The Panel finds that the Respondent's actions, with respect to five of the disputed domain names, specifically <gianpaolo.info>, <pauldicocco.com>, <paul-dicocco.com>, <gianpaolodicocco.com> and <gianpaolo-dicocco.com>, constitute bad faith registration and use.

Given the specific circumstances present here as discussed in the immediately preceding section above, the Respondent's conduct in registering and using five separate domain names <gianpaolo.info>, <pauldicocco.com>, <paul-dicocco.com>, <gianpaolodicocco.com> and <gianpaolo-dicocco.com>, each of which is either identical or confusingly similar to one of the Complainant's marks but does not include any further term(s) to sufficiently avoid confusion, so as to increase the likelihood such confusion will occur also constitutes bad faith registration and use under paragraph 4(b) of the Policy.

The Respondent is only using three of these five names, specifically <gianpaolo-dicocco.com>, <pauldicocco.com> and <gianpaolo.info> with the other two <paul-dicocco.com> and <gianpaolodicocco.com> being inactive. Nevertheless, the Panel finds that, if the present status quo were to continue unabated, then it is rather likely that, over time, the Respondent would either use these two names in the same fashion, as he currently uses the other three, or would continue passively holding the two names, as he is now doing. In either situation, he would effectively prevent the Complainant from registering both of those names and thereby reflecting the Complainant's marks in corresponding domain names. Inasmuch as a pattern, as required by paragraph 4(b)(ii) of the Policy, can be established with as few as two domain names, the Respondent's continued passive holding, were it to occur, may well constitute bad faith use in violation of that paragraph.

Thus, the Panel concludes that the Complainant has provided sufficient evidence of its allegations, with respect to these five disputed domain names to establish a case under paragraph 4(a) of the Policy upon which the relief it now seeks regarding these names can be granted.

As the Respondent has legitimate rights and interests in the remaining one of the six disputed domain names, specifically <gianpaolo-dicocco-failed-predictions.com>, the Complainant has failed to meet its burden for this name under paragraph 4(a) to successfully prove cybersquatting under the Policy. Consequently, the Panel will not opine on any question of bad faith regarding this name as this aspect is moot.

8. Decision

Accordingly, under paragraphs 4(i) of the Policy and 15 of the Rules, the Panel grants in part and denies in part, the relief sought by the Complainant.

The Panel grants the requested remedy with respect to eight of the disputed domain names. Specifically, the eight disputed domain names <gianpaoloastrology.com>, <makeastrologygreatagain.org>, <make-astrology-great-again.com>, <gianpaolo.info>, <pauldicocco.com>, <paul-dicocco.com>, <gianpaolodicocco.com> and <gianpaolo-dicocco.com> are to be transferred to the Complainant.

However, the Complainant's request to transfer the ninth disputed domain name <gianpaolo-dicocco-failed-predictions.com> is denied.

Peter L. Michaelson

Sole Panelist

Date: January 15, 2018