



WIPO Arbitration and Mediation Center

ADMINISTRATIVE PANEL DECISION

Citgo Petroleum Corporation v. Richard Antinore

Case No. D2006-1576

1. The Parties

The Complainant is Citgo Petroleum Corporation, Houston, Texas, United States of America, represented by Doerner, Saunders, Daniel & Anderson, LLP, United States of America.

The Respondent is Richard Antinore, St. Petersburg, Florida, United States of America.

2. The Disputed Domain Names and Registrar

The disputed domain names are <nomocitgo.biz>, <nomocitgo.com>, <nomocitgo.info>, <nomocitgo.net> and <nomocitgo.org>, all of which are registered with Go Daddy Software (the Registrar).

3. Procedural History

The Complaint was brought pursuant to the Uniform Domain Name Dispute Resolution Policy (the “Policy”), which was adopted by the Internet Corporation for Assigned Names and Numbers (ICANN) on August 26, 1999, and approved on October 24, 1999, and in accordance with the Rules for Uniform Domain Name Dispute Resolution Policy (the “Rules”) as approved on October 24, 1999, and the World Intellectual Property Organization Supplemental Rules for Uniform Domain Name Dispute Resolution Policy in effect as of December 1, 1999 (the “Supplemental Rules”).

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) in email form on December 7, 2006, and in hard copy form on December 13, 2006, along with Annexes 1-3.

Pursuant to paragraph 4(d) of the Policy, the Complainant selected the Center as the ICANN approved administrative dispute resolution service provider to administer this proceeding. Through the Complaint, the Complainant requested a single-member panel.

After receiving the Complaint, the Center, in accordance with paragraph 5 of the Supplemental Rules, verified that the Complaint complied with the formal requirements of the Rules and the Supplemental Rules. In that regard, on December 13, 2006, the Center requested confirmation from the Registrar of information set forth in the Complaint relative to the disputed domain names: specifically, contact and registrant information for each domain name, as well as whether the Registrar received a copy of the Complaint from the Complainant. The Center also requested the Registrar to specify: (a) whether the Policy applies to the disputed domain names, (b) whether the registrant has submitted, in its registration agreement for each name, to the jurisdiction at the location of the principal office of the registrar for court adjudication of disputes concerning or arising from the use of that name, (c) the language of each of the registration agreements, and (d) whether all the domain names will remain “locked” during the proceeding.

Subsequently, on December 13, 2006, the Registrar provided its response to the Center through which the Registrar specified name and contact information pertinent to each of the disputed domain names to the extent present in its Whois database, and which confirmed that the Respondent is listed as the registrant of each of these names and provided the contact details for the administrative, billing and technical contacts. The response also confirmed that Go Daddy.com is the registrar of all the names and stated that: the Registrar had received a copy of the Complaint, the Policy applied to all the disputed domain names and all those names were then held in a “locked” status. The Registrar also indicated, through its response, that for all the names: the Respondent has submitted, for court adjudication, to the jurisdiction at the location of the principal office of the Registrar; and the registration agreements are in English.

In response to a Complaint Deficiency Notice dated December 22, 2006, from the Center, the Complainant filed a suitably amended Complaint on December 22, 2006, and in hard-copy form on December 27, 2006, the latter with Annexes 1-4. For simplicity, all ensuing references to the Complaint will be to the amended version.

The Center verified that the Complaint satisfied the formal requirements of the Policy, the Rules, and the Supplemental Rules.

On January 4, 2007, the Center formally notified the Respondent, by e-mail letter, of the filing of the Complaint, including an indication that the Center was forwarding a complete copy of the Complaint, together with all its Annexes, by courier to the Respondent. The Complaint and its accompanying documents, and all subsequent communications associated therewith, were provided in the preferred manners and to the addresses as mandated by paragraphs 2(a), 2(b) and 4(a) of the Rules.

Having reviewed the Complaint and all preceding and succeeding correspondence between the Center and the Registrar, in detail, the Panel agrees with the determination of the Center that the Complaint and its handling met the requirements of the Rules and the Supplemental Rules.

The Respondent was then provided with a 20 calendar day period, expiring on January 24, 2007, to file its Response with the Center and serve a copy of the Response on the Complainant.

As of January 25, 2007, the Center had not received a Response to the Complaint from the Respondent; hence, the Center, in an email letter dated January 25, 2007, notified both the Complainant and the Respondent of the default of the Respondent.

In an email message sent to the Center on January 25, 2007, the Respondent stated that the January 25th letter from the Center was the first time he heard from the Center and also inquired as to what he is to respond to and how to do so. Through an e-mail message sent that same day, the Center pointed the Respondent to the link on the Center's website at which he could find guidelines for a response as well as through which he could file a response on-line. On January 26, 2007, the Respondent filed a Response on-line through the Center's web site. Though this Response was two days late, the Panel considers it to be sufficiently timely and thus has accepted and fully considered it.

Accordingly, pursuant to the Rules and Supplemental Rules, by email letter dated February 12, 2007, the Center contacted the undersigned, Mr. Peter L. Michaelson, requesting his service as a Sole Panelist for this dispute. Subsequently, on the same day, Mr. Michaelson accepted and returned, by facsimile to the Center, a fully executed Statement of Acceptance and Declaration of Impartiality and Independence. The Center, through an email letter dated February 15, 2006, notified the parties of the appointment of Mr. Michaelson as Sole Panelist.

Based on the deadline set forth in paragraph 15 of the Rules, a decision was to be issued by the Panel to the Center on or before March 1, 2007. However, due to time conflicts then being experienced by the Panel – which constituted unforeseen circumstances, the Center, upon the Panel's request, extended the due date to March 14, 2007.

This dispute concerns five domain names, specifically: <nomocitgo.biz>, <nomocitgo.com>, <nomocitgo.info>, <nomocitgo.net> and <nomocitgo.org>.

The language of this proceeding is English.

4. Factual Background

As indicated in the Whois registration records provided by the Registrar, the Respondent originally registered all the disputed domain names on September 23, 2006.

A. Complainant's CITGO Marks

The Complainant owns numerous US and foreign trademark registrations for the term CITGO either by itself in block letters or with a design element (specifically a triangular device composed of three abutting, solidly colored triangles which the Complainant refers to as a "trimark" device). The Complainant has provided a list of its foreign registrations, (including the country, mark, application/registration serial number, file/registration date, goods and class) on pages 6-14 of the Complaint and, in Annex 3 to the Complaint, copies of record entries for its US registrations (though the database from which these records are taken is not specified in the Complaint). Pertinent details of illustrative ones of its US registrations are as follows:

- (1) CITGO (block letters)
United States registration 798,036; registered: October 26, 1965
last renewed: October 26, 2005
filed: February 23, 1965

This mark was registered for use in connection with “gasoline” in international class 4. The record states that both first use and first use in commerce of the mark for this good in class 4 commenced as of February 4, 1965.

(2) CITGO (block letters)
United States registration 811,940; registered: August 2, 1966
last renewed: August 2, 2006
filed: July 22, 1965

This mark was registered for use in connection with “lubricating oils” in international class 4 and “automobile service station services” in international class 37. The record states that both first use and first use in commerce of the mark for these goods and services in classes 4 and 37 commenced as of May 17, 1965.

(3) CITGO (block letters) and trimark design
United States registration 844,353; registered: February 20, 1968
last renewed: February 20, 1988
filed: November 3, 1966

This mark was registered for use in connection with “antifreeze, rust inhibitor, solvent and liquefied petroleum gas” in international classes 2 and 4, “gasoline, lubricating oils, petroleum wax, automatic transmission fluid, penetrating oil, grease, cutting oil, and mold release oil” in international classes 1 and 4, “retail credit services” in international class 36 and “automobile service station services” in international class 37. The record states that both first use and first use in commerce of the mark for all these goods and services in all the listed classes commenced as of May 17, 1965.

The Panel would have much preferred that the Complainant provide copies of official records such as printouts of registration records provided from the US Patent and Trademark Office (PTO), such as through the publicly accessible TESS database (Trademark Electronic Search System) available through the PTO web site, or copies of its actual registration certificates rather than records from a database, as here, of unknown origins. Doing so would have made all the records self-validating as well as self-authenticating. Nevertheless, since the Respondent did not question the data in any of the records provided by the Complainant, the Panel simply infers that all the data in all these records is correct.

B. The Parties and their Activities

The Complainant merely points to its registrations and provided no other details as to its activities. However, the Panel takes judicial notice that Complainant is a well-known, large, vertically-integrated oil company based in Houston, Texas and has been so for at least several decades, and appears to be currently owned by the Government of Venezuela. Mr. Hugo Chavez is the current President of Venezuela.

The Respondent in a letter dated October 10, 2006 (a copy of which appears in Annex 1 to the Complaint) stated:

“Dear Sir:
This entire program was set up to protest Hugo Chavez.
Thank you for not doing business with him any more. It is a very wise move on your part.
It would also be wise to clean up the internet exposure of Citgo.
I will do my part in assisting you by allowing you to purchase all domain names

and production of T-shirts, and removal of website.

11 Domains @ \$ 500 ea.	
1 website	<u>\$ 5000.00</u>
	10,500.00

Sincerely,
Mr. Richard Antinore
2047 -2nd Ave N
St Petersburg, FL 33713
[telephone number redacted by
Panel]

Guarantee of website removal

Transfer of Domains to Citgo Petroleum Corp.”

The Respondent also distributes black T-shirts with the following wording written on the front of each shirt:

NO-MO
CITGO.

Two items accompanied the October 10th letter, namely:

- (a) a hard-copy printout showing such a shirt, as worn, apparently as available through the Respondent’s website; and
- (b) a printout, from the Registrar listing the Respondent’s 11 domain names with the Registrar’s registration price details apparently redacted. That printout also contained, in its upper left hand section, text handwritten by the Respondent which reads:

“These Domains are privately owned by me.
Each domain is \$ 500.00
The website NOMOCITGO.COM is available @ \$ 5000.00”

On March 7, 2007, the Panel, acting in its discretion, accessed the home page resolved by each of the disputed domain names and found the following:

- (a) <nomocitgo.biz> pointed to a page that simply displayed that domain name in block letters above two narrow solid color bars that extended the entire width of the page;
- (b) <nomocitgo.info> and <nonmocitgo.net>, each pointed to a similar parked page provided by the Registrar, with each page displaying a list of various sponsored links (including ones listed on the <nomocitgo.info> home page for “Texaco Credit Cards”, “Gas Station Loans”, “citgo” and “Citgo Gas Credit Card”) and below those links a separate listing of popular search links for a variety of business categories (e.g., travel, real estate, personal finance, insurance, computers and e-commerce) all unrelated to Complainant; and
- (c) <nomocitgo.com> and <nomocitgo.org> each pointed to the same page which stated beginning at its top:

“•Home Page

Purchase a NO-MO CITGO Tee shirt and wear it proudly to help stop sending money to terrorists who have killed americans and continue to do so.

Hugo Chavez, you are not welcome in my country anymore. We don't want your business and we are not going to buy anymore citgo products from CITGO oil co." followed by a button labeled "Shopping Cart", and thereafter "Copyright 2006-2007, richard antinore. All rights reserved".

5. Parties' Contentions

A. Complainant

(i) Identical or Confusingly Similar

The Complainant appears to contend that each disputed domain name, by virtue of its inclusion of the mark CITGO, is confusingly similar to the Complainant's CITGO Marks.

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, for any of several reasons, the Respondent has no rights or legitimate interests in any of the disputed domain names pursuant to paragraph 4(a)(ii) of the Policy.

First, the Complainant alleges that the Respondent registered the names to extort monetary payment from the Complainant by virtue of first establishing a "gripe" site through which some of the names resolve and then demanding payment to take the site down.

Second, no evidence exists that the Respondent ever used or prepared to use, any of the disputed domain names or a name corresponding to each such name in connection with a *bona fide* offering of goods or services. In fact, the evidence of record indicates that the Respondent simply desires payment from the Complainant in exchange for removing the domain names and his web site critical of the Complainant (and in particular the policies of the Venezuelan government which the Respondent directly links, in his site, to the Complainant).

Lastly, the Respondent has never been commonly known by any of the disputed domain names and his only purpose in owning the names is to personally profit by forcing the Complainant to remit payment in order to avoid the tarnishment of its marks.

(iii) Registered and Used in Bad Faith

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

In that regard, the Complainant alleges that the Respondent registered the domain names primarily for the purpose of selling, renting, or otherwise transferring the domain names to the Complainant for valuable consideration, specifically US \$ 10,500.00, in excess of the Respondent's out-of-pocket costs directly related to the domain names -- as indicated in his October 10th letter to the Complainant.

B. Respondent

The Response simply stated:

“there is nothing identicle with my domains and [citgo]. obvious to anyone with common sense. Citgo petroleum uses trademarks for oil and gas. my domains were used specifically for hugo chavez, and have nothing to do with citgo petroleum corp, or their trademarks” (bracketed term in original).

6. Discussion and Findings

A. Identical or Confusingly Similar

The Panel finds that confusion is likely to arise as a result of the Respondent’s use of each of the disputed domain names.

Specifically, each disputed domain name is simply formed by prepending two simple terms “no mo” to Complainant’s mark CITGO to form the term “nomocitgo” and then appending a different generic top level domain (gTLD) thereto to form the name. –It is well-established that the addition of a gTLD is ignored in assessing identity/similarity under paragraph 4(a)(i) of the Policy.

It is now very well-established in UDRP precedent, including various decisions rendered by this Panel, that minor variations, such as adding short letter or number groups or even a generic word to a mark are each grossly insufficient in and of itself, when used in forming a domain name that results from modifying the mark, to confer requisite and sufficient distinctiveness to that name to avoid user confusion. See, e.g., *SPX Corp. v. Hevun Diversified Corp.*, NAF Case No. FA791657(November 13, 2006); *Google Inc. v. Burns*, NAF Case No.FA 726096 (August 16, 2006); *The Cheesecake Factory Inc. and The Cheesecake Factory Assets Co., LLC v. Say Cheesecake*, WIPO Case No. D2005-0766 (September 12, 2005); *Napster, Inc. v. Vinscani*, WIPO Case No. D2005-0531 (July 19, 2005); *Caesars Entm’t., Inc. v. Nova Internet Inc*, WIPO Case No. D2005-0411 (June 22, 2005); *Lockheed Martin Corp. v. The Skunkworx Custom Cycle*, WIPO Case No. D2004-0824 (January 18, 2005); *Lockheed Martin Corp. v. Deborah Teramani*, WIPO Case No. D2004-0836 (December 1, 2004); and *Nat’l Collegiate Athletic Assoc. v. Dusty Brown*, WIPO Case No. D2004-0491 (August 30, 2004). This result follows from a simple comparison of each of the disputed domain names against the Complainant’s mark CITGO.

While a sufficient number of variations or even one such significant variation itself made to a mark may suffice, under a specific factual situation, to impart requisite distinctiveness to a resulting domain name and there through dispel user confusion (see *CP Films, Inc. v. Solar Lunar Performance Film*, NAF Case No. FA861127 (February 6, 2007), such is clearly not the case under the present facts at hand. In fact, here, the Panel finds the Respondent intentionally chose the terms “no mo” inasmuch as they are a commonly understood abbreviation in the United States for “no more”. The Respondent it appears appended those terms to the Complainant’s mark CITGO to make a blunt statement of his opinion against the Complainant and there through its owner, the Government of Venezuela -- which completely negates any view that the Respondent did so in an effort to yield domain names that were sufficiently distinguishable from the mark.

With this in mind, each of the disputed domain names is confusingly similar to the Complainant's CITGO Marks.

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

B. Rights or Legitimate Interests

The Panel believes that the Respondent has not and cannot provide any basis that would in the circumstances legitimize a claim to the disputed domain name under paragraph 4(c) of the Policy.

To assess whether the Respondent has rights or legitimate interests in any of the names, the Panel first observes that two distinct usage patterns for these names appear to exist. Two of the names <nomocitgo.com> and <nomocitgo.org> resolve to what appears to be a common so-called web page, i.e., a so-called "gripe" site, at which the Respondent posted his criticism. Each of two remaining names, <nomocitgo.info> and <nomocitgo.net>, resolves to what appears to be a parked page provided by the Registrar and containing categorized lists of links to sponsored third-party sites. The last name <nomocitgo.biz> resolves to a web page that merely displays that same name in block letters with nothing else of consequence. Hence, the Panel views this last name, for all intents and purposes, as also being parked and hence classifies this name as such. The Panel will separately assess each group.

A. Gripe site group -- <nomocitgo.com> and <nomocitgo.org>

In essence, these names resolve to a web site that provides speech critical of the government of Venezuela, which is the owner of the Complainant, and its President, Mr. Chavez.

Sites that serve as a medium through which a respondent posts his negative views may be broadly and generically referred to as "gripe sites". It is now rather well established in UDRP precedent that at least in cases including parties based in the US, a respondent's site that solely provides criticism, regardless of the severity or directness of that criticism, is protected under the First Amendment to the US Constitution as being an exercise of that respondent's right of free speech. However, such protection is not absolute. If the respondent engages in actions that evince bad faith thus indicating that the respondent's intentions were not aimed solely at providing critical comment, then any such protection which would otherwise arise is lost.

Specifically, in *Nat'l Collegiate Athletic Assoc., cited supra*, this Panel was faced with the issue of whether a respondent had a legitimate interest in a domain name which it used as an address of a gripe site critical of a complainant but who had demanded payment of a considerable sum from that complainant for transfer of the name. In reaching its conclusion that the respondent had no legitimate interests in the name, the Panel reasoned as follows - reasoning which is equally instructive in the present case:

The general issue of whether a respondent has a legitimate interest in a domain name which contains a complainant's mark and is used to resolve to a website that provides criticism of the activities of the mark's owner has been considered by quite a number of UDRP Panels.

As indicated in the extremely thorough, thoughtful and well-reasoned decision in *Howard Jarvis Taxpayers Association v. Paul McCauley*, WIPO Case No. D2004-0014 (April 22, 2004), the Panel observed that, where US parties and/or panelists were

involved, domain name transfer was repeatedly ordered in situations where some “indicia of bad faith existed that tended to suggest that criticism was not the respondent’s primary motive.” Specifically, the Panel stated:

‘The Panel acknowledges that transfer has been ordered in some trademark.TLD criticism cases involving U.S. parties. ... [I]n many of those cases, there were indicia of bad faith that tended to suggest that criticism was not the respondent’s primary motive. *See, e.g., Council of American Survey Research Organizations (CASRO) v. Consumer Information Organization LLC*, Case No. D2002-0377 (WIPO July 19, 2002) (ordering transfer of domain name <casro.com> where criticism site was used to market products, respondent owned over 1200 domain names, and many of respondent’s domain names incorporated famous marks); *New York Times Co. v. New York Internet Services*, Case No. D2000-1072 (WIPO December 5, 2000) (ordering transfer of domain name <newyorktimes.com> where respondent received financial benefit from advertising on commentary site); *Estée Lauder, Inc. v. Estelauder.com, Estelauder.net, and Jeff Hanna*, Case No. D2000-0869 (WIPO September 25, 2000) (ordering transfer of <estelauder.com> and <estelauder.net> where domains of complaint sites established by law firm incorporated misspelling of complainant’s trademark, complainant submitted considerable evidence of actual confusion, respondent concealed sponsorship of complaint sites by law firm, and respondent reserved other domain names incorporating famous marks); *Rollerblade, Inc. v. McCrady*, Case No. D2000-0429 (WIPO June 25, 2000) (ordering transfer of domain name <rollerblade.net> where panel rejected respondent’s use of site for rollerblading photos as pre-textual and found respondent made “overtures to be bought off” in order to transfer domain name). Similar issues appear to have informed court decisions that have ruled for plaintiffs in these circumstances. *See People for the Ethical Treatment of Animals (PETA) v. Doughney*, 263 F.3d 359 (4th Cir. 2001) (ordering transfer of domain name <peta.org> despite use as parody website after finding bad faith intent to profit by registrant); *Jews for Jesus v. Brodsky*, 993 F. Supp. 282 (D.N.J. 1998), *aff’d*, 159 F.3d 1351 (3d Cir. 1998) (finding confusion where criticism site was confusingly designed to look like official Jews For Jesus site and defendant admitted his intent was to deceive consumers about the sponsorship of his website); *Planned Parenthood v. Bucci*, 42 U.S.P.Q.2d 1430 (S.D.N.Y. 1997) (finding confusion where criticism site was confusingly designed to look like official Planned Parenthood site in order to lure readers into the site before delivering its anti-abortion message), *aff’d*, 152 F.3d 920 (2d Cir. 1998), *cert. denied*, 119 S. Ct. 90 (1998). Nevertheless, in some of these cases, the Panels broadly held that there is no legitimate interest in a trademark.TLD criticism cite, and there are other such decisions as well. *E.g., Prem Rawat Found. v. Leason*, File No. FA0401000231883 (NAF March 27, 2004) (although Panel held that Respondent’s site was not a *bona fide* criticism site, Panel also noted its view that, “while the content of Respondent’s website may enjoy First Amendment protection, such protection does not spawn rights or legitimate interests with respect to a domain name which is confusingly similar to another’s trademark. Respondent cannot claim rights or legitimate interests in the domain name’.

The Panel then concluded -with which this Panel completely agrees “that the weight of authority suggests that a consensus is emerging that trademark.gTLD domain names, when used for U.S.-based criticism sites, can constitute a legitimate interest, especially where there are not indicia of bad faith.” *Ibid*. Given the facts there at hand, the Panel found that the respondent’s site was a “classic criticism site” and, in the absence of any

evidence that reflected bad faith, denied transfer of the domain name to the complainant. Also see *American Lubefast Franchising, Inc. v. Chung Rigby*, WIPO Case No. D2004-0329 (July 26, 2004) where, in spite of the Respondent's contention that it was using <americanlubefast.com> to address a gripe site and thus its use was a legitimate exercise of its free speech rights under the First Amendment, the Panel found bad faith use and registration of that name as a result of the respondent having offered that name for sale to the Complainant for US\$20,000 and ordered that name transferred. In *Council of American Survey Research Organizations v. The Consumer Information Organization, LLC, aka Pinelands Web Services*, WIPO Case No. D2002-0377 (July 19, 2002), a majority of the Panel found the respondent used the contested domain name in bad faith and not solely in conjunction as an address of a website that provided criticism of an owner of a correspond mark contained within the name. Further, in *Bridgestone Firestone, Inc., Bridgestone / Firestone Research, Inc. and Bridgestone Corporation v. Jack Myers*, WIPO Case No. D2000-0190 (July 6, 2000), the Panel found that a domain name was used, without any purpose of commercial gain, to address a website that provided criticism, and hence denied its transfer. The Panel cited *Name.Space, Inc., v. Network Solutions, Inc.* 202 F.3rd 573, 585 (2d Cir. 2000) where the Second Circuit, with respect to free speech, held that "Domain Names ... per se are neither automatically entitled to nor excluded from the protections of the First Amendment, and the appropriate inquiry is one that fully addresses particular circumstances presented with respect to each domain name." In *Justice for Children v. R neetso/Robert W. O'Steen* WIPO Case No. D2004-0175 (June 4, 2004), the Panel, in spite of the respondent there asserting free speech grounds for retaining its domain name, found the respondent used the domain name to expressly and intentionally disrupt the activities of the complainant, hence finding bad faith and ordered the name transferred. Compare *Jules I. Kendall v. Donald Mayer Re:skipkendall.com*, WIPO Case No. D2000-0868 (October 26, 2000) where a Panel refused to order transfer of a domain name which was used to address a site critical of a trademark owner and particularly in the absence of any showing that, *inter alia*, the Respondent registered and used the name in an attempt to sell it at a profit.

Given this reasoning, this Panel in the *National Collegiate Athletic Assoc., cited supra*, found that by virtue of the respondent's actions in offering to sell the disputed domain name for US \$10,000 - a price far in excess of its costs of registration - to the complainant, the motive (of a prior registrant related to and whose actions were imputed to the respondent) for registering and using the disputed domain name was manifestly commercial and not solely to provide criticism, hence evidencing bad faith and thus a lack of legitimate interest in the name.

Such is indeed the case here. It is eminently clear from the correspondence of record that here the Respondent offered to sell each of the disputed domain names to the Complainant for US \$ 500 and the "gripe site" itself for US \$ 5000, for a total of US \$ 10,500 - which unquestionably and substantially exceeds his cost of registration for all these names.

Whatever intent the Respondent might have had in using the two names as vehicles for disseminating critical speech, that intent, when viewed in the totality of the evidence before this Panel, is clearly inferior to Respondent's actions of attempting to commercially profit from the sale of the domain names. Further, the Respondent's action in attempting to coerce the Complainant into purchasing his gripe site itself compels a finding that the Respondent's main purpose, in both registering all the names and using the two that he did and in the manner he did, was ultimately to extort a significant sum of money from the Complainant in exchange not only for the names themselves but also for a cessation of Respondent's negative criticism, hence forcing

the Complainant to pay to silence the Respondent.

Attaining financial gain was obviously a significant, though not necessarily the only, element motivating the Respondent's conduct. This manifests bad faith under paragraph 4(b)(i) of the Policy and, in so doing, pre-empts whatever free speech protections that may otherwise arise and thus any claim the Respondent might have had that his use of either of these names constitutes, under paragraph 4(c)(iii) of the Policy, legitimate fair use. See, e.g., *FMR Corp. v. Native American Warrior Society, Lamar Sneed, Lamar Sneed*, WIPO Case No. D2004-0978 (January 20, 2005).

Thus, the Respondent has no rights or legitimate interests in any of these three names under any provision of paragraph 4(c) of the Policy.

B. Parked group - <nomocitgo.info>, <nomocitgo.net> and <nomocitgo.biz>

As to these names, no evidence exists of record that leads this Panel to conclude that through any of these three names, the Respondent:

(a) prior to receiving notice of the Complaint, made any demonstrable preparations to use the name in conjunction with a *bona fide* offering of goods or services, (b) has been commonly known that name, or (c) is using that name in conjunction with any legitimate noncommercial or fair use manner not intended to misleadingly divert consumers or tarnish the Complainant's CITGO Marks.

Further, no evidence exists that the Complainant has ever authorized the Respondent to utilize its mark CITGO or any mark confusingly similar thereto in conjunction with the specific goods and services which the Complainant provides under its CITGO Marks, nor does the Complainant apparently have any relationship or association whatsoever with the Respondent. As such, any use to which the Respondent were to put the mark CITGO or one confusingly similar thereto, in connection with the goods or services provided by the Complainant or those similar thereto, would directly violate the exclusive rights now residing in the Complainant. See, e.g., *Krings v. Hernandez, cited supra; New Destiny Internet Group, LLC and Xplor Media, Inc. v. SouthNetworks*, WIPO Case No. D2005-0884 (October 14, 2005); *The Cheesecake Factory Inc. and The Cheesecake Factory Assets Co., LLC v. Say Cheesecake*, WIPO Case No. D2005-0766 (September 12, 2005); *Napster, Inc. v. Giovanni Vinscani*, WIPO Case No. D2005-0531 (July 19, 2005); *Caesars Entertainment, Inc. v. Nova Internet Inc.*, WIPO Case No. D2005-0411 (June 22, 2005); *Pelmorex Communications Inc. v. weathernetwork*, WIPO Case No. D2004-0898 (December 28, 2004); *Sybase, Inc. v. Analytical Systems*, WIPO Case No. D2004-0360 (June 24, 2004); *Caesars World, Inc. and Park Place Entertainment Corporation v. Japan Nippon*, WIPO Case No. D2003-0615 (September 30, 2003); *Leiner Health Services Corp. v. ESJ Nutritional Products*, NAF Case No. FA 173362 (September 16, 2003); *AT&T Corp. v. Roman Abreu d/b/a Smartalk Wireless, cited supra; MPL Communications, Limited et al v. IWebAddress.com*, NAF Case No. FA 97092 (June 4, 2001); *America Online, Inc. v. Xianfeng Fu*, WIPO Case No. D2000-1374 (December 11, 2000); and *Treeforms, Inc. v. Cayne Industrial Sales, Corp.*, NAF Case No. FA 95856 (December 18, 2000). Consequently, the Respondent could not legally acquire any public association between it and the mark CITGO or one similar thereto, at least for the branded goods and services rendered by the Complainant or similar branded goods and services, and hence could not be commonly known or recognized by that mark and thus could not fall within paragraph 4(c)(ii) of the Policy.

Thus, the Respondent has no rights or legitimate interests in any of these three names

under any provision of paragraph 4(c) of the Policy.

Accordingly, the Panel concludes that the Respondent has no rights or legitimate interests in any of the five disputed domain names within paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

The Panel believes that the Respondent's actions constitute bad faith registration and use of all the disputed domain names.

For the reasons set forth in the preceding section of this decision, the Panel finds that the Respondent conduct in registering and using each of the disputed domain names violates paragraph 4(b)(i) of the Policy.

Thus, the Panel concludes that the Complainant has provided sufficient proof of its allegations to establish a case under paragraph 4(a) of the Policy upon which the relief it now seeks can be granted.

7. Decision

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

All the disputed domain names, <nomocitgo.biz>, <nomocitgo.com>, <nomocitgo.info>, <nomocitgo.net> and <nomocitgo.org>, are ordered transferred to the Complainant.

Peter L. Michaelson
Sole Panelist

Dated: March 14, 2007