

Before the:

**WORLD INTELLECTUAL PROPERTY ORGANIZATION
ARBITRATION AND MEDIATION CENTER**

CHICAGO TRIBUNE COMPANY

Case No: D2012-1076

Complainant,

-v-

Disputed Domain Names:

www.occupiedchicagotribune.org

www.occupychicagotribune.org

ALAN MAASS

Respondent

RESPONSE TO COMPLAINT

I. Introduction

1. On May 30, 2012, an amended complaint was filed by the Complainant and was received by the Respondent via e-mail informing the Respondent that an administrative proceeding had been commenced by the Complainant in accordance with the Uniform Domain Name Dispute Resolution Policy (the Policy), approved by the Internet Corporation for Assigned Names and Numbers (ICANN) on October 24, 1999, the Rules for Uniform Domain Name Dispute Resolution Policy (the Rules), approved by ICANN on October 30, 2009, and the WIPO Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the Supplemental Rules). June 19, 2012 (20 days from the date that Respondent was notified of the amended complaint) is the last day for the submission of a Response by the Respondent. The Respondent hereby responds to the statements and allegations in Complaint and respectfully requests the panel to deny the remedy requested by the Complainant.

II. Respondent's Contact Details

2. The Respondent's contact details are:

Name: Alan Maass c/o Attorneys Ben Elson and Michael Deutsch
of the People's Law Office.

Address: 1180 N. Milwaukee Ave., Chicago, Illinois 60642

Telephone: 773-235-0070

Fax: 773-235-6699

E-mail: michaeled45@gmail.com or elsonben@aol.com

3. The Respondent's authorized representative in this administrative proceeding is:

Attorneys Michael Deutsch and Ben Elson of the People's Law Office
(see above)

4. The Respondent's preferred method of communications directed to the Respondent in this administrative proceeding is:

Electronic-only material

Method: e-mail
Address: michaeled45@gmail.com or elsonben@aol.com
Contact: Michael Deutsch and Ben Elson

Material including hardcopy

Method: Overnight Courier
Address: Ben Elson
 People's Law Office
 1180 N. Milwaukee Ave.
 Chicago, IL 60642
Fax: 773-235-6699
Contact: Ben Elson

III. Response to Statements and Allegations Made in Complaint

5. The Respondent hereby responds to the statements and allegations in the Complaint and respectfully requests the Administrative Panel to deny the remedies requested by the Complainant.

Introduction

6. This is a case about the fundamental human right of political speech. Occupied Chicago Tribune and Occupy Chicago Tribune (hereinafter OCT) is a community based, volunteer, non-incorporated, not-for-profit organization that criticizes the biased, corporate news of the Chicago Tribune. It publishes periodically online and in newsprint a 4-8 page broadsheet which is distributed for free.

7. Respondent has no affiliation with the Chicago Tribune or the Tribune Company; rather it seeks to provide information about the activities of Occupy Chicago, a group protesting income inequality and other injustices of the United States political system, and is affiliated with other Occupy groups based in most of the major cities of the United States. In addition to the protests of Occupy Chicago, OCT also addresses other

issues of concern to the people of Chicago who are seeking better schools, housing, health care and an end to wars and poverty.

8. By covering many of the issues which are of concern to the poor and working people of Chicago, issues often ignored or reported with a conservative bias by the Chicago Tribune, OCT implicitly acts as a critique of the mainstream corporate media of the United States, including the Chicago Tribune, which operates in the interest of the 1% of the U.S. population.

9. OCT's website and broadsheet are written and published by a group of volunteer activist journalists. Neither the writers, publishers nor the distributors of OCT receive any compensation for their work and the publication is available for free to its readers.

10. The OCT publication is non-commercial and is in no way a business competitor of the Chicago Tribune.¹

A. Respondent's domain names are neither identical nor confusingly similar to a trademark or service mark in which the Complainant has rights.

11. There is no reasonable or legitimate claim that OCT domain names are confusingly similar to the Complainant's trademark. The Complainant cites no evidence that OCT domain names are in fact confusing with its trademark. "Occupied Chicago Tribune" or "Occupy Chicago Tribune" is clearly distinguishable from the "Chicago Tribune" and no reasonable person would confuse the daily published Chicago Tribune and its domain name with the free, non-commercial periodic OCT broadsheet and website. The words "Occupy" and "Occupied" have become synonymous with drawing attention to corruption or other oligarchical misdeeds within an institution. This point is implicitly made by using the word "Occupied" before "Chicago Tribune."

12. Contrary to the bald unsupported claim of the Chicago Tribune, there is no evidence that OCT is attempting to "divert traffic from Tribune sites or [to] unfairly attract for commercial gain Internet users to the Active Site by trading on the fame of the CHICAGO TRIBUNE Mark and benefit from the goodwill Chicago Tribune has created in the CHICAGO TRIBUNE." (Compl. at ¶ 24). In fact, OCT seeks no commercial gain from its use of its domain name, is not a commercial competitor with the Chicago Tribune, and rather than appropriate the "good will of the Chicago Tribune," seeks to

¹ OCT raises money to cover printing costs and other expenses only.

criticize and differentiate itself from the 1% interests of the Chicago Tribune. The cases cited by Complainant are distinguishable as they concern efforts to use a confusing domain name with the intent to attract for commercial gain Internet users. *See, e.g., Madonna Ciccone p/k/a Madonna v. Dan Parisi and Madonna.co*, Case No. D2000-0847 (WIPO Oct 12, 2000). In this case, the Respondent seeks no commercial gain and the Complainant has not presented any evidence to the contrary.

13. Further, the fact that Respondents' website has a disclaimer that "We are proud to have no affiliation whatsoever with the 1% Chicago Tribune or the Tribune Company," is not evidence "that Respondent understands that a likelihood of confusion exists;" rather this disclaimer was inserted in response to a threat of a lawsuit by the Chicago Tribune. While the Respondent believed that there was no possibility of confusion since its publication was a voluntary, non-commercial activist newspaper, it did not want to incur legal expenses, and therefore offered the disclaimer as a way to pacify the Chicago Tribune's lawyer.²

B. Respondent's domain names were not registered in bad faith and OCT has the political right to use the domain names they have chosen.

14. Policy ¶ 4(c)(iii) expressly recognizes that a party has rights to and legitimate interest in a domain name if 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." (emphasis added). Here, OCT's use in critiquing the contents and subjects addressed in the Chicago Tribune is both entirely noncommercial *and* fair.

15. OCT is a not-for-profit, volunteer, organization with no intent for commercial gain. OCT is not a business competitor of the Chicago Tribune, its publication is available for free to its readers, and none of the OCT staff receive compensation for their work.

² Complainant's claim that Respondent displays a "distinctive stylized logo version of the CHICAGO TRIBUNE Mark used by Chicago Tribune in the banner headings of the Chicago Tribune newspaper and the Chicago Tribune Sites" is false and misleading. Compl. at ¶ 24. The portion of Annex 3 which Complainant uses to support this statement is an older version of Respondent's website, in which the masthead contained the same gothic font for the words "Chicago Tribune" as that used by the Chicago Tribune. The current version of Respondent's website uses a non-gothic font for the words "Chicago Tribune" and does not resemble the Chicago Tribune's banner headings whatsoever. See and compare occupiedchicagotribune.org with chicagotribune.com.

16. OCT has not chosen their domain names in bad faith. In choosing “Occupied Chicago Tribune” and “Occupy Chicago Tribune,” they are exercising their fundamental political right to contrast, critique and criticize the news reporting of the Chicago Tribune, which acts in the interests of the rich and powerful, with OCT’s efforts to represent the poor and working people of Chicago. See *La Quinta v. Heartland Times*, WIPO Case No. D2007-1660 (“something more than criticism is required to establish illegitimacy and bad faith within the meaning of the Policy.”); *Coast Hotels Ltd. v. Bill Lewis and UNITE HERE*, WIPO Case No. D2009-1295; *Howard Jarvis Taxpayers Association v. McCauley*, WIPO Case No. D2004-0014.

17. Examples of OCT articles which criticize the Chicago Tribune include: “*The Chicago Tribune Mis-chronicles Misconduct*,” January 16, 2012 (“The Chicago Tribune’s yellow journalism reached unseemly hues January 5, when it published its front-page expose ‘New report chronicles misconduct within CPS.’ Its misrepresentations are so severe even Joseph Medill, no saint himself, must be rolling in his grave.”); “*Mayor 1% Seeks Stenographers*,” February 20, 2012 (“And in Chicago, all too often the media buys into the narrative Rahm Emanuel is selling and goes along with it.”); “*The Tribune Tower of Babble*,” March 17, 2012 (“Their lawyer insisted that the Tribune Company has an interest in “protecting the brand,” confirming what disappointed readers have known for years—that the Chicago Tribune is first and foremost a marketable commodity, and only secondarily a news source. What remains of journalism at the company has fallen to its rapidly diminishing newsroom workforce.”); “*CPD Hit and Run Victim Exists, and Tells His Story*,” May 22, 2012 (“In short time, the 1% Chicago Tribune, along with other mainstream media, filed in lock-step behind CPD Superintendent Garry McCarthy’s story: that the protester faked his injury, that someone had punched the driver in the head, giving him a concussion, that protesters attacked the van, and that the videos, though unclear, seem to confirm this official narrative.”); “*The Mobius Talking Point: Brizard Quotes the Media Quoting Brizard*,” June 8, 2012 (“Last month, some six-thousand teachers and supporters took over downtown streets to show their numbers. And Wednesday, the real voting began... Predictably, establishment media have rushed in to temper the enthusiasm. On May 24, the Chicago Tribune’s editorial “Strike talk? Now?: The rush for confrontation” urged teachers against seizing the moment.”). These articles are attached as **Annex 1**.

18. Respondents in choosing their domain names and publishing their periodic news broadsheet are clearly exercising their right guaranteed to them under the First

Amendment to the United States Constitution. “The weight of authority [in UDRP proceedings] suggests that a consensus is emerging that trademark TLD domain names when used for U.S. based criticism sites, can constitute a legitimate interest, especially if there are not indicia of bad faith.” *Howard Jarvis Taxpayers Association v. McCauley*, WIPO Case No. D2004-0014; *see also Home Interiors & Gifts Inc. v. Home Interiors*, WIPO Case No. D2000-0010 (panel should “look to rules and principles of law set out in decisions of the courts of the United States.”)

19. UDRP complaints involving Americans are routinely denied when the website criticizes or offers commentary about the complainant. See, e.g., *Sermo, Inc. v. CatalystMD, LLC*, WIPO Case No. D2008-0647 (transfer of criticism site denied even when respondent defaulted); *Bridgestone Firestone, Inc., v. Myers*, WIPO Case No. D2000-0190 (claim denied as *bridgestone-firestone.net* was a criticism site); *TMP Worldwide Inc. v. Potter*, WIPO Case No. D2000-0536 (claim denied as *tmpworldwide.net* and *tmpworldwide.org* criticized the complainant); *Bruce Springsteen v. Jeff Burgar and Bruce Springsteen Club*, WIPO Case No. D2000-1647 (denying complaint when respondent merely planned to launch a criticism site); *Bakers Delight Holdings Ltd. v. Andrew Austin*, WIPO Case No. D2008-0006 (website with no commercial content “dedicated to genuine criticism” without commercial gain nor an attempt to divert users looking for complainant’s site was legitimate fair use); *Pensacola Christian Coll. v. Gage*, NAF Case No. FA101314 (claim denied as *pensacolachristiancollege.com* was a criticism site); *Action Instruments, Inc. v. Technology Associates*, WIPO Case No. D2003-0024 (same).

20. Recognizing these principles, the UDRP tolerates nominative fair use of trademarks in the context of a site that contains critique and criticism. In this case, since the likelihood of confusion is nonexistent, the use is noncommercial, and there is no evidence of bad faith, the Panel should find for the Respondent. See, e.g., *Covance, Inc. and Covance Laboratories Ltd. v. The Covance Campaign*, WIPO Case No. D2004-0206.

IV. Administrative Panel

(Rules ¶¶ 5(b)(iv) and (b)(v) and ¶ 6; Supplemental Rules ¶ 7)

21. The Respondent elects to have the dispute decided by a single-member Administrative Panel.

V. Other Legal Proceedings

(Rules ¶ 5(b)(vi))

22. No other legal proceedings have been commenced

VI. Communications

(Rules ¶¶ 2(b), 5(b)(vii); Supplemental Rules ¶¶ 3, 7, 12)

23. A copy of this Response has been sent or transmitted to the Complainant on June 18, 2012 by email.

24. This Response is submitted to the Center in electronic form, including any annexes, in the appropriate format.

VII. Certification

(Rules ¶ 5(b)(viii), Supplemental Rules ¶ 14)

25. The Respondent agrees that, except in respect of deliberate wrongdoing, an Administrative Panel, the World Intellectual Property Organization and the Center shall not be liable for any act or omission in connection with the administrative proceeding.

26. The Respondent certifies that the information contained in this Response is to the best of the Respondent's knowledge complete and accurate, that this Response is not being presented for any improper purpose, such as to harass, and that the assertions in this Response are warranted under the Rules and under applicable law, as it now exists or as it may be extended by a good-faith and reasonable argument.

Dated: June 18, 2012

Respectfully submitted,

ALAN MAASS

By: /s/ Michael E. Deutsch and Ben H. Elson
Michael E. Deutsch
Ben H. Elson
Attorneys for Respondent

Schedule of Annexes

Annex 1 OCT Articles Criticizing Chicago Tribune