

## **ADMINISTRATIVE PANEL DECISION**

**Business Debt Solutions, Inc. v. Domains by Proxy, LLC / Francisco Mercado**  
Case No. D2022-0314

### **1. The Parties**

Complainant is Business Debt Solutions, Inc., United States of America (“U.S.” or “United States”), represented by Vedder Price P. C., United States of America.

Respondent is Domains by Proxy, LLC, U.S. / Francisco Mercado, U.S.

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

The disputed domain name <10xbizcap.com> (the “Domain Name”) is registered with GoDaddy.com, LLC (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on January 29, 2022. On January 31, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On February 1, 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 and contact information in the Complaint. The Center sent an email communication to Complainant on February 8, 2022, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amended Complaint on February 12, 2022.

The Center verified that the Complaint together with the amended Complaint satisfied the formal requirements of the Uniform Domain Name Dispute Resolution Policy (the “Policy” or “UDRP”), the Rules for Uniform Domain Name Dispute Resolution Policy (the “Rules”), and the WIPO Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the “Supplemental Rules”).

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified Respondent of the Complaint, and the proceedings commenced on February 16, 2022. In accordance with the Rules, paragraph 5, the due date for Response was March 8, 2022. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on March 9, 2022.

On February 11, 2022, the Center sent an email to the parties indicating that “[a]s you are aware, the domain name is set to expire on February 17, 2022. To that end, the Center has received information from the

concerned Registrar indicating that they ‘will ensure 10XBIZCAP.COM remains locked and does not expire during the course of the proceeding. The prevailing party may be responsible for the cost of the renewal upon the conclusion of the dispute”.

The Center appointed Christopher S. Gibson as the sole panelist in this matter on March 25, 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**

Complainant is a provider of financial consulting services in the field of commercial financing. Complainant was established in 2002, and since that time has been continuously providing financial consulting services under its trademark BIZCAP throughout the United States. Since at least February 11, 2005, Complainant has also been continuously providing financial consulting services under its trademark BIZCAP.COM throughout the United States. Complainant has provided archived copies of the home page of Complainant’s website appearing at <bizcap.com>, showing its website as it appeared on September 18, 2015, obtained from the Internet Archive’s Wayback Machine. Complainant registered its domain name, <bizcap.com>, on August 21, 2003. Complainant has continuously promoted itself and its services under the BIZCAP and BIZCAP.COM marks since that time.

Complainant is also the owner of the following BIZCAP and BIZCAP.COM trademark registrations in the United States:

- BIZCAP, U.S. reg. No. 5707497, registered March 26, 2019, (date of first use January 2002), in class 36 for financial consulting services in the field of commercial financing.
- BIZCAP.COM, U.S. Reg. No. 5922389, registered November 26, 2019, (date of first use February 11, 2005) in class 36 for financial consulting services in the field of commercial financing.

The Domain Name was registered by Respondent on February 17, 2019. It links to a webpage purporting to offer financial services similar to those offered by Complainant.

#### **5. Parties’ Contentions**

##### **A. Complainant**

(i) Identical or confusingly similar

Complainant contends that the Domain Name is virtually identical or confusingly similar to a trademark or service mark in which Complainant has rights.

Complainant states that under U.S. law, its registered BIZCAP and BIZCAP.COM trademarks serve as *prima facie* evidence of the validity of the registered mark and of the registration of the mark, of the registrant’s ownership of the mark, and of the registrant’s exclusive right to use the mark in commerce on or in connection with the goods or services specified in the registration. Complainant submits that as confirmed by the U.S. Patent and Trademark Office in granting principal register registrations for these marks without requiring a claim of acquired distinctiveness, Complainant’s BIZCAP and BIZCAP.COM marks are inherently distinctive. As such, the marks were distinctive at the time Complainant adopted them for the same reasons.

In the alternative, Complainant’s states that its longstanding and pervasive use of its BIZCAP and BIZCAP.COM marks, including through Complainant’s website appearing at “www.bizcap.com”, for over a decade before Respondent’s registration of the Domain Name, shows that Complainant’s marks had

acquired distinctiveness by the time the Domain Name was registered. Complainant asserts that it and Respondent target the same customers with the same services, and Respondent's targeted customers were well-familiar with Complainant's famous marks at the time the Domain Name was registered.

Complainant submits it has continuously used the BIZCAP and BIZCAP.COM trademarks throughout the United States (where Respondent is located) since at least January 2002, and February 11, 2005, respectively. The public has come to identify Complainant as the source of its services offered under the BIZCAP and BIZCAP.COM trademarks. Complainant's trademark registrations and the continuous and extensive use of the BIZCAP trademark by Complainant for over 20 years and the BIZCAP.COM trademark by Complainant for over 15 years establish Complainant's proprietary rights in these marks.

Further, Complainant's asserts its trademark rights substantially predate Respondent's registration of the Domain Name. At the time Respondent registered the Domain Name in February 2017, Complainant had been operating under the BIZCAP mark for over 15 years and the BIZCAP.COM mark for over 12 years.

Complainant states the Domain Name fully incorporates both Complainant's BIZCAP mark and Complainant's BIZCAP.COM mark. The additional term "10x" is generic or descriptive and, therefore, does not reduce the likelihood of confusion but on the contrary increases it. Here, in the context of the parties' business, the wording "10x" is a well-known descriptive phrase referring to obtaining "10 times growth" on an investment or business (*i.e.*, a customer can use the financing services provided by Complainant to obtain a "10x" growth of their business). Complainant's marks and the Domain Name each have a dominant element, BIZCAP. As shown above, for over 20 years, Complainant has continuously used the mark BIZCAP. The dominant portion of the Domain Name is Complainant's BIZCAP and/or BIZCAP.COM marks.

Respondent purports to provide services through the Domain Name that are directly competitive to the services offered by Complainant under Complainant's marks. Complainant offers a variety of services under its BIZCAP and BIZCAP.COM marks, including but not limited to various financial consulting services in the field of commercial financing, including offering financing and credit solutions to companies generally and small businesses in particular. Respondent offers loans and funding services, including specifically offering financing services to small businesses, through the Domain Name.

For the aforementioned reasons, the Domain Name is identical or confusingly similar to the BIZCAP and BIZCAP.COM marks, in which Complainant has rights.

(ii) Rights or legitimate interests

Complainant contends that Respondent has no rights or legitimate interests in respect of the Domain Name by virtue of the fact that Respondent's use of the BIZCAP and BIZCAP.COM trademarks in the Domain Name is unauthorized and Respondent's use of the Domain Name is intended for commercial gain apart from any reasonable fair use.

Respondent's use of a confusingly similar mark to Complainant's BIZCAP and BIZCAP.COM trademarks is unauthorized. Complainant did not grant any right for Respondent to use the BIZCAP and BIZCAP.COM trademarks or any variation thereof. Respondent's use of the Domain Name is intended for commercial gain and Respondent is using the Domain Name to purportedly offer services directly competitive to those of Complainant. Complainant argues that use of the Domain Name cannot be considered to be in connection with a *bona fide* offering if the probability is that it was meant to confuse Internet users as to source or affiliation.

Upon information and belief, Complainant states that Respondent has no rights in the BIZCAP and BIZCAP.COM marks generally or in the Domain Name, as Respondent adopted the Domain Name solely to trade off Complainant's goodwill in Complainant's BIZCAP and BIZCAP.COM marks. Respondent registered and began using the Domain Name more than 12 years after Complainant adopted trademarks. Upon information and belief, Respondent registered the Domain Name with the intent of trading off Complainant's goodwill in Complainant's BIZCAP and BIZCAP.COM trademarks.

Complainant asserts that Respondent is not now (and never has previously been) known as “bizcap”. Respondent’s website located at the Domain Name does not refer to Respondent as “bizcap” or “10xbizcap”; rather, the website prominently refers to Respondent as either “10Xcap” or “10xcapital”. Upon information and belief, Complainant states that Respondent has not registered BIZCAP as an alias or trademark and has never promoted itself using the name or mark BIZCAP other than by means of the Domain Name and the single, small-print copyright notice. An individual using the email address <[...]@10xbizcap.com> conceded on November 10, 2021, that Respondent does not use (and is not known by) the phrase “bizcap”. The webpage at the Domain Name continues to describe Respondent’s “Low Interest Emergency Relief Loans” offered to “small businesses” with the deliberate purpose of attracting consumers to the site who mistakenly believe the site is associated with Complainant.

The mistaken belief is created and perpetuated by the fact that the Domain Name is composed entirely of the BIZCAP.COM mark with the addition of the letters “10x”. This similarity – used with services directly competitive to those of Complainant – implies affiliation and cannot constitute fair use, as it effectively suggests sponsorship or endorsement by Complainant. Specifically, a consumer is likely to incorrectly believe that the financial services offered by Respondent are actually offered by Complainant, and that the website hosted at the Domain Name is owned and operated by Complainant, and that the website to which the Domain Name resolves is affiliated with or sponsored by Complainant in some way.

(iii) Registered and used in bad faith

Complainant contends that the Domain Name was registered by Respondent on February 17, 2019, in bad faith, and is being used in bad faith today. Circumstances indicate that the Domain Name was registered to intentionally attempt to attract, for commercial gain, Internet users to the Domain Name by creating a likelihood of confusion with Complainant’s BIZCAP and BIZCAP.COM trademarks or to prevent Complainant, owner of the BIZCAP and BIZCAP.COM trademarks, from reflecting the mark in a corresponding domain name.

Respondent registered the Domain Name, which, as stated above, fully incorporates Complainant’s BIZCAP mark as the dominant portion of the Domain Name. Upon information and belief, Complainant claims that Respondent deliberately selected a domain name that fully incorporates Complainant’s BIZCAP mark as the dominant portion (and differs from Complainant’s BIZCAP.COM mark only in the addition of the letters “10x” at the start of the Domain Name) in order to falsely suggest to the public that Respondent is somehow associated with Complainant, which Respondent is not.

Complainant states that Respondent has effectively conceded that its use of the Domain Name is infringing. An individual claiming to be “council” [stet] for Respondent using the email address <[...]@10xbizcap.com> and identifying themselves as “Gene Ros” acknowledged that Respondent would need to transition to a new domain name, implicitly agreeing that use of this Domain Name by Respondent is in bad faith and infringes upon Complainant’s rights. However, as this individual refused to commit to Respondent promptly changing to a new domain name and ceased responding to Complainant, Complainant was left with no choice but to bring this case to obtain relief.

Complainant submits that in addition to demonstrating that Respondent has acted in bad faith by deliberately attempting to mislead the public into believing Respondent is associated with Complainant, Respondent’s actions demonstrate that Respondent had actual knowledge of Complainant and Complainant’s BIZCAP and BIZCAP.COM trademarks at the time Respondent registered the Domain Name. Upon information and belief, Complainant states Respondent registered the Domain Name knowing of – and intending to benefit from and trade off of – Complainant’s goodwill associated with its BIZCAP and BIZCAP.COM marks.

By virtue of its choice of the Domain Name and the contents of its website, Respondent has intentionally attempted to attract, for commercial gain, Internet users to the Domain Name by creating a likelihood of confusion with Complainant’s BIZCAP and BIZCAP.COM trademarks. As shown above, Respondent is intentionally attempting to create confusion among Internet users to attract attention to the Domain Name for

commercial gain.

## **B. Respondent**

Respondent did not reply to Complainant's contentions.

## **6. Discussion and Findings**

To succeed on its Complaint, Complainant must demonstrate that the three elements set forth in paragraph 4(a) of the Policy have been satisfied. These elements are that:

- (i) the Domain Name registered by Respondent is identical or confusingly similar to a trademark or service mark in which Complainant has rights;
- (ii) Respondent has no rights or legitimate interests in respect of the Domain Name; and
- (iii) Respondent has registered and is using the Domain Name in bad faith.

### **A. Identical or Confusingly Similar**

The Panel finds that Complainant has demonstrated rights in its distinctive BIZCAP and BIZCAP.COM trademarks through both registration and use.

The Panel further determines that the Domain Name is confusingly similar to Complainant's BIZCAP and BIZCAP.COM trademarks. The Panel finds that the Domain Name incorporates these marks in their entirety, while added the term "10x" in the first position: "10xbizcap". This combination in the Domain Name does not avoid confusing similarity with Complainant's marks. Numerous UDRP decisions have found that the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) does not prevent a finding of confusing similarity. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.8; see also section 1.7, which states, "where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to that mark for purposes of UDRP standing". Further, the added term "10x" is a descriptive term often referring to "10 times growth", which is pertinent to Complainant's business. See *BHP Billiton Innovation Pty Ltd, BMA Alliance Coal Operations Pty Ltd v. Cameron Jackson*, WIPO Case No. [D2008-1338](#), ("The addition of the words 'diamond mine' to the mark EKATI is merely descriptive and doesn't distinguish the Disputed Domain Name from the Complainants' mark, this finding is supported by the fact that the EKATI Diamond Mine is an important part of the Complainants' business").

Accordingly, the Panel finds that the Domain Name is confusingly similar to a trademark in which Complainant has rights in accordance with paragraph 4(a)(i) of the Policy.

### **B. Rights or Legitimate Interests**

Regarding the second element of the Policy, section 2.1 of the [WIPO Overview 3.0](#) provides that "where a complainant makes out a *prima facie* case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name".

Here, the Panel determines that Complainant has made out a *prima facie* case, while Respondent has failed to respond to Complainant's contentions. In particular, the Panel finds that Complainant has not authorized Respondent to use Complainant's BIZCAP and BIZCAP.COM trademarks; that Respondent is not commonly known by the Domain Name or the name "bizcap" (instead, Respondent's website refers to Respondent as either "10Xcap" or "10xcapital"); and that Respondent has not used the Domain Name for a legitimate noncommercial or fair use.

Further and importantly, the Panel also determines that Respondent has not used the Domain Name in connection with a *bona fide* offering of goods or services. Instead, the Panel finds, on the balance of the probabilities, that Respondent registered the Domain Name while targeting Complainant and its distinctive BIZCAP and BIZCAP.COM marks, and used the Domain Name to draw consumers to Respondent's website offering competing financial services. Complainant offers financial consulting services in the field of commercial financing, while Respondent's site located at the Domain Name apparently offers loans and funding services, including specifically offering financing services to small businesses.

The Domain Name is composed of the distinctive BIZCAP.COM mark with the addition of the letters "10x". The term "bizcap" is a fanciful term that does not correspond to any ordinary English language (or other language) word. There is no plausible reason why Respondent would have chosen the Domain Name without having Complainant and its marks in mind. This similarity – used with services directly competitive to those of Complainant – implies affiliation, sponsorship or endorsement by Complainant. See [WIPO Overview 3.0](#), section 2.5. Thus, this use by Respondent does not support a finding of rights or legitimate interests in the Domain Name. See *Alight Solutions, LLC v. Withheld for Privacy Purposes, Privacy service provided by Withheld for Privacy ehf / Stella Abina*, WIPO Case No. [D2021-2892](#) ("Use of a disputed domain name to resolve to a page that offers services in direct competition with the Complainant [...] does not provide the Respondent with rights or legitimate interests."). Rather, the use constitutes bad faith, as it will "disrupt the Complainant's business and divert Internet users searching for the Complainant to a competing website for commercial gain". *Id.*

Accordingly, for all the above reasons, the Panel finds that Complainant has made a *prima facie* showing of Respondent's lack of rights or legitimate interests in respect of the Domain Name, which has not been rebutted by Respondent. The Panel therefore finds that Complainant has established the second element of the Policy in accordance with paragraph 4(a)(ii).

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

The third element of paragraph 4(a) of the Policy requires that Complainant demonstrate that Respondent registered and is using the Domain Name in bad faith. [WIPO Overview 3.0](#), section 3.1, states "bad faith under the UDRP is broadly understood to occur where a respondent takes unfair advantage of or otherwise abuses a complainant's mark".

The Panel determines, as explained in section B above, that the evidence in this case demonstrates Respondent registered and is using the Domain Name in bad faith. First, the evidence indicates that Respondent had Complainant and its distinctive BIZCAP and BIZCAP.COM marks in mind and targeted Complainant's marks when registering the Domain Name. The Panel finds that there is no other no plausible explanation for the choice of the Domain Name by Respondent. Further, by virtue of its choice of the Domain Name (Complainant's trademark together with term "10x" referring to "10 times growth" which is pertinent to Complainant's business) and the content of its website, Respondent has intentionally attempted to attract, for commercial gain, Internet users to the Domain Name by creating a likelihood of confusion with Complainant's trademarks. The website linked to the Domain Name appears to offer services directly competitive to those of Complainant. Respondent has effectively acknowledged in communications to Complainant's legal counsel that its use of the Domain Name was improper, but Respondent (or its representative) apparently refused to commit to promptly changing to a new domain name and ceased responding to Complainant.

In conclusion, the Panel determines that, for all the above reasons, the Domain Name was registered and is being used in bad faith. Accordingly, Complainant has satisfied the third element of the Policy.

## 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, <10xbizcap.com>, be transferred to Complainant.

*/Christopher S. Gibson/*

**Christopher S. Gibson**

Sole Panelist

Date: April 26, 2022