

ADMINISTRATIVE PANEL DECISION

10X LLC v. Privacy Service provided by Withheld for Privacy ehf / cap ten,
10xcapitals
Case No. D2022-0779

1. The Parties

The Complainant is 10X LLC, United States of America (“United States”), represented by Sisun Law, United States.

The Respondent is Privacy Service provided by Withheld for Privacy ehf. Iceland / cap ten, 10xcapitals, United States.

2. The Domain Name and Registrar

The disputed domain name <10xcapitals.com> (the “Disputed Domain Name”) is registered with NameCheap, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on March 4, 2022. On March 7, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On March 7, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Disputed Domain Name which differed from the named Respondent and contact information in the Complaint. The Center sent an email communication to the Complainant on March 14, 2022, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed an amended Complaint on April 13, 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 the Respondent of the Complaint, and the proceedings commenced on April 20, 2022. In accordance with the Rules, paragraph 5, the due date for Response was May 10, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on June 1, 2022.

The Center appointed Lynda M. Braun as the sole panelist in this matter on June 8, 2022. The Panel finds that it was properly constituted. The Panel has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the Center to ensure compliance with the Rules, paragraph 7.

4. Factual Background

The Complainant, a Delaware limited liability company, is an investment firm with global clients who invest alongside the world's top technology investors in private and public markets. The Complainant is the owner of the registered trademark 10X CAPITAL, United States Registration No. 6,441,711, registered on August 3, 2021, with a first use in commerce of January 1, 2018, in international class 36 (hereinafter referred to as the "10X CAPITAL Mark").¹

The Complainant owns the domain name <10xcapital.com>, which it registered on September 4, 2016, and which resolves to the Complainant's official website at "www.10xcapital.com". The Complainant's website is used in connection with financing, investing, venture capital, and loans, among other services. The Complainant's website attracts over 1200 visitors per month in traffic based on a rough average of visitors from January 2021 to January 2022.

The Disputed Domain Name was registered on November 22, 2021 and resolves to the Respondent's website at "www.10xcapitals.com", attempting to pass off as the Complainant's website. The Respondent uses the 10X CAPITAL Mark (without the "s") on its website, where it advertises identical investment services as the Complainant, provides a list of the Complainant's clients as if they were those of the Respondent, and lists the Complainant's address as its own address,² all to create a false association with the Complainant and divert consumers to the Respondent's website to confuse consumers, and for the Respondent's commercial gain.

5. Parties' Contentions

A. Complainant

The following are the Complainant's contentions:

- the Disputed Domain Name is confusingly similar to the Complainant's 10X CAPITAL Mark;
- the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name;
- the Disputed Domain Name was registered and is being used in bad faith; and
- the Complainant seeks the transfer of the Disputed Domain Name from the Respondent to the Complainant in accordance with paragraph 4(i) of the Policy.

B. Respondent

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

¹ Hans Thomas, the founder of the Complainant, is listed as the owner of the 10X CAPITAL Mark on the trademark registration certificate but assigned the trademark and associated goodwill to the Complainant on August 4, 2021.

² At some point between February 17, 2022 and March 1, 2022, the Respondent changed its address on the website from that identical to the Complainant's to a different one.

6. Discussion and Findings

Paragraph 4(a) of the Policy requires that the Complainant prove the following elements in order to prevail in this proceeding:

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

A. Identical or Confusingly Similar

This element consists of two parts: first, does the Complainant have rights in a relevant trademark and, second, is the Disputed Domain Name identical or confusingly similar to that trademark. The Panel concludes that the Disputed Domain Name is confusingly similar to the 10X CAPITAL Mark.

It is uncontroverted that the Complainant has established rights in the 10X CAPITAL Mark based on its several years of use as well as its registered trademark for the 10X CAPITAL Mark in the United States, where the Respondent purportedly resides. The consensus view is that “registration of a mark is *prima facie* evidence of validity, which creates a rebuttable presumption that the mark is inherently distinctive”. See *CWI, Inc. v. Domain Administrator c/o Dynadot*, WIPO Case No. [D2015-0734](#). The Respondent has not rebutted this presumption, and therefore the Panel finds that the Complainant has rights in the 10X CAPITAL Mark. Moreover, the registration of a mark satisfies the threshold requirement of having trademark rights for purposes of standing to file a UDRP case. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), section 1.2.1. Thus, the Panel finds that the Complainant has rights in the 10X CAPITAL Mark.

The Disputed Domain Name consists of the 10X CAPITAL Mark in its entirety, although misspelled by only adding one letter – the letter “s” in “capital”, and then followed by the generic Top-Level Domain (“gTLD”) “.com”. Such a minor modification to a trademark is commonly referred to as “typosquatting” and seeks to wrongfully take advantage of errors by a user in typing a domain name into a web browser. The misspelling of the Disputed Domain Name does not prevent a finding of confusing similarity to the 10X CAPITAL Mark. [WIPO Overview 3.0](#), section 1.9 (“A domain name which consists of a common, obvious, or intentional misspelling of a trademark is considered by panels to be confusingly similar to the relevant mark for purposes of the first element”); see also *Silversea Cruises, Ltd. v. Whois Agent, Domain Protection Services, Inc. / Domain Vault, Domain Vault LLC*, WIPO Case No. [D2018-2306](#) (“The Domain Name [silverseas.com] is virtually identical to the SILVERSEA trademark but for the addition of the letter ‘s’ creating a plural version of the SILVERSEA trademark. The addition of the letter ‘s’ does not distinguish the Domain Name from the SILVERSEA trademark and is a common form of typosquatting.”).

Further, the addition of a gTLD such as “.com” in a domain name is technically required. Thus, it is well established that such element may typically be disregarded when assessing whether a domain name is identical or confusingly similar to a trademark. See *Proactiva Medio Ambiente, S.A. v. Proactiva*, WIPO Case No. [D2012-0182](#) and [WIPO Overview 3.0](#), section 1.11. Thus, the Panel concludes that the Disputed Domain Name is confusingly similar to the Complainant’s 10X CAPITAL Mark.

Accordingly, the Panel finds that the first element of paragraph 4(a) of the Policy has been met by the Complainant.

B. Rights or Legitimate Interests

Under the Policy, a complainant has to make out a *prima facie* case that the respondent lacks rights or legitimate interests in the disputed domain name. Once such a *prima facie* case is made, the respondent

carries the burden of production of evidence that demonstrates rights or legitimate interests in the disputed domain name. If the respondent fails to do so, the complainant may be deemed to have satisfied paragraph 4(a)(ii) of the Policy. See [WIPO Overview 3.0](#), section 2.1.

In this case, the Panel finds that the Complainant has made out a *prima facie* case. The Respondent has not submitted any arguments or evidence to rebut the Complainant's *prima facie* case. The Complainant has not authorized, licensed, or otherwise permitted the Respondent to use its 10X CAPITAL Mark. Nor does the Complainant have any type of business relationship with the Respondent and there is no evidence that the Respondent is commonly known by the Disputed Domain Name or by any name similar to it. The Panel finds that nothing on the record before it would support a finding that the Respondent is making a legitimate noncommercial or fair use of the Disputed Domain Name.

Based on the use made of the Disputed Domain Name to resolve to a website that attempts to pass off the Complainant's official website to deceive consumers into believing that they have reached a website that is operated or endorsed by or otherwise affiliated with the Complainant, the Panel finds that the Respondent is not making a *bona fide* offering of goods or services nor making a legitimate noncommercial or fair use of the Disputed Domain Name. See [WIPO Overview 3.0](#), section 2.13.1 ("Panels have categorically held that the use of a domain name for illegal activity (e.g., the sale of counterfeit goods or illegal pharmaceuticals, phishing, distributing malware, unauthorized account access/hacking, impersonation/passing off, or other types of fraud) can never confer rights or legitimate interests on a respondent.").

The Respondent is using the confusingly similar Disputed Domain Name to redirect to a website that purports to provide financial services almost identical to and competing with those of the Complainant, coupled with its attempt to pass itself off as the Complainant through its use of the Complainant's 10X CAPITAL Mark, the Complainant's list of partners, and initially, the Complainant's address. Such use is neither a *bona fide* offering of goods or services pursuant to Policy 4(c)(i), nor a legitimate noncommercial or fair use pursuant to Policy 4(c)(iii). See *MasterCard International Incorporated v. Dhe Jonathan Firm*, WIPO Case No. [D2007-0831](#) (finding that the act of linking the respondent's impersonating website to the complainant's official website was not a *bona fide* offering of goods or services nor a legitimate noncommercial or fair use of the disputed domain name).

Noting that the Complainant is a financial services firm, the composition of the Disputed Domain Name, and based on the use made of the Disputed Domain Name to resolve to a website that purports to offer venture capital and cryptocurrency services, the Panel finds that the Respondent is not making a *bona fide* offering of goods or services nor making a legitimate noncommercial or fair use of the Disputed Domain Name. In fact, noting the nature of the website at the Disputed Domain Name, the Panel has serious doubts on whether any actual services are provided, and the Respondent's use of the Disputed Domain Name cannot be considered as noncommercial.

Finally, the composition of the Disputed Domain Name, comprising the entirety of the 10X CAPITAL Mark, with the addition of the letter "s" to make it plural, carries a risk of implied affiliation and cannot constitute fair use here, as it effectively impersonates or suggests sponsorship or endorsement by, the Complainant. See [WIPO Overview 3.0](#), section 2.5. Specifically, a consumer is likely to incorrectly believe that the financial and cryptocurrency services advertised on the Respondent's website are actually offered by the Complainant, and that the website hosted at "www.10xcapitals.com" is owned and operated by the Complainant, and that the aforementioned website is affiliated with or sponsored by the Complainant in some way.

Accordingly, the Panel finds that the second element of paragraph 4(a) of the Policy has been met by the Complainant.

C. Registered and Used in Bad Faith

The Panel finds that, based on the record, the Complainant has demonstrated the existence of the Respondent's bad faith pursuant to paragraph 4(b) of the Policy as set forth below.

First, the Panel concludes that the Respondent knew about the Complainant's rights in the 10X CAPITAL Mark when it registered the Disputed Domain Name, since it added the letter "s" to "capital" to misdirect users from the Complainant's website to the Respondent's website by capitalizing on typing mistakes made by users. See *Nutricia International BV v. Eric Starling*, WIPO Case No. [D2015-0773](#). Moreover, the Respondent was aware of the Complainant and its 10X CAPITAL Mark and was thus intentionally capitalizing on potential customer confusion. Considering the circumstances in this case, it is not possible to conceive of a plausible situation in which the Respondent would have been unaware of the Complainant's 10X CAPITAL Mark at the time the Respondent registered the Disputed Domain Name. See *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#). Specifically, the Respondent must have been aware of the Complainant's trademark, particularly given that the Respondent is not only using the confusingly similar domain name <10xcapitals.com>, but at the resolving website located at "www.10xcapitals.com", the Respondent is also using the Complainant's exact 10X CAPITAL Mark (without the added letter "s" in the Disputed Domain Name), the Complainant's list of partners, and the Complainant's address.

Second, the use of a domain name to intentionally attempt to attract Internet users to a respondent's website by creating a likelihood of confusion with a complainant's mark as to the source, sponsorship, affiliation or endorsement of the respondent's website demonstrates registration and use in bad faith. Based on the circumstances here, the Respondent registered and is using the Disputed Domain Name in bad faith to target the Complainant's 10X CAPITAL Mark, to disrupt the Complainant's business, and to drive Internet traffic seeking the Complainant's services to the website to which the Disputed Domain Name resolves, a financial services site passing off as the Complainant. See paragraph 4(b)(iv) of the Policy.

Moreover, the registration of a domain name that reproduces a trademark in its entirety (being identical or confusingly similar to such trademark) by an individual or entity that has no relationship to that mark, without any reasonable explanation on the motives for the registration, may be suggestive of opportunistic bad faith. See *Ebay Inc. v. Wangming*, WIPO Case No. [D2006-1107](#); *Veuve Clicquot Ponsardin, Maison Fondée en 1772 v. The Polygenix Group Co.*, WIPO Case No. [D2000-0163](#).

Accordingly, the Panel finds that the third element of paragraph 4(a) of the Policy has been met by the Complainant.

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 Disputed Domain Name <10xcapitals.com> be transferred to the Complainant.

/Lynda M. Braun/

Lynda M. Braun

Sole Panelist

Date: June 22, 2022