

ADMINISTRATIVE PANEL DECISION

10X LLC v. Josue Emanuel Velasquez Pereda, 10XCAPITALPE
Case No. D2022-1401

1. The Parties

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

The Respondent is Josue Emanuel Velasquez Pereda, 10XCAPITALPE, Peru.¹

2. The Domain Name and Registrar

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

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on April 19, 2022. On April 20, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On the same day, 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 April 25, 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 amendment to the Complaint on May 3, 2022.

The Center verified that the Complaint together with the amendment to the 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 May 4, 2022. In accordance with the Rules, paragraph 5, the due date for Response was May 24, 2022. The Respondent did not submit any response. Accordingly,

¹ The original Complaint identified a privacy service as the Respondent. After the Registrar verified the underlying customer data, the Complaint was amended to add the name of the underlying registrant, whom the Panel understands to be the proper Respondent.

the Center notified the Respondent's default on May 27, 2022.

The Center appointed Matthew Kennedy as the sole panelist in this matter on June 1, 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 is an investment firm. It holds United States trademark registration number 6441711 for 10X CAPITAL, registered on August 3, 2021, with a claim of first use in commerce on January 1, 2018, specifying services in class 36 and disclaiming exclusive use of the word "capital" apart from in the mark. The trademark registration was assigned to the Complainant by its founder and Chief Executive Officer on August 4, 2021, along with the associated goodwill, and the assignment has since been recorded in the register.

The Complainant operates a website in English associated with the domain name <10xcapital.com>, where it provides information about itself and its investment services. The website prominently displays the 10X CAPITAL mark with a stylized X partly in blue.

The Respondent is identified as an individual ("Josue Emanuel Velasquez Pereda") and what appears to be an abbreviation of his business name ("10XCAPITALPE"). According to the website associated with the disputed domain name, Mr. Velásquez is a founder of a business named "10X Capital Peru".

The disputed domain name was registered on May 4, 2021. It resolves to a website in Spanish for "10X Capital Peru" that offers investment services. It invites Internet users to download a brochure, sign a contract and allow the operator to invest their capital in financial markets. The website repeatedly displays the terms "10X Capital", including with a stylized X partly in blue. The contact details are email addresses associated with the disputed domain name, and a telephone number in Peru with no street address. The website at the disputed domain name is linked to an Instagram account for "10X Capital Perú" that is presented as a private fund manager.

The Registrar confirmed that the language of the Registration Agreement is English.

5. Parties' Contentions

A. Complainant

The disputed domain name is confusingly similar to the Complainant's 10X CAPITAL mark. The Complainant holds registered rights in that mark since 2021. However, the Complainant's common law rights extend back further: it has continuously used the mark in commerce since at least January 2018. The Complainant applied for its trademark registration in June 2019. The Complainant registered its domain name in September 2016 and launched its website in 2016. That website received approximately 1,200 views per month in 2021.

The Respondent has no rights or legitimate interests in respect of the disputed domain name. The Respondent does not operate a legitimate business under that name. Its website purports to offer services identical to, and competing with, those of the Complainant. The Respondent has received no authorization from the Complainant to use or register the 10X CAPITAL mark, including as part of the disputed domain name. The Respondent is not commonly known by the disputed domain name.

The disputed domain name was registered and is being used in bad faith. The Respondent's actual notice of the Complainant's rights in the 10X CAPITAL mark is irrefutable. The Respondent is using the Complainant's mark stylized identically to the Complainant's logo on the social media pages directly accessible from the website associated with the disputed domain name. The disputed domain name is clearly intended to lure the Complainant's consumers to the Respondent's website for services identical to those of the Complainant but not associated with, or endorsed by, the Complainant.

B. Respondent

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

6. Discussion and Findings

Paragraph 4(a) of the Policy provides that the Complainant must prove each of the following elements:

- (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 has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

Based on the evidence presented, the Panel finds that the Complainant has registered rights in the 10X CAPITAL mark. Given the Panel's findings regarding bad faith in Section 6C below, it is unnecessary to consider the Complainant's claim of prior common law rights in the mark.

The disputed domain name wholly incorporates the 10X CAPITAL mark, omitting only the space between "10x" and "capital" for technical reasons. It adds the letters "pe", which form the two-letter country code for Peru. Given that the mark remains clearly recognizable within the disputed domain name, the addition of this geographical term does not avoid a finding of confusing similarity with the mark. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (["WIPO Overview 3.0"](#)), section 1.8.

The only additional element in the disputed domain name is a generic Top-Level Domain ("gTLD") extension (.com) which, as a mere standard requirement of domain name registration, does not prevent a finding of confusing similarity between the disputed domain name and the mark either. See [WIPO Overview 3.0](#), section 1.11.

Therefore, the Panel finds that the disputed domain name is confusingly similar to a trademark in which the Complainant has rights. The Complainant has satisfied the first element in paragraph 4(a) of the Policy.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy sets out the following circumstances which, without limitation, if found by the panel, shall demonstrate that the respondent has rights to, or legitimate interests in, a disputed domain name, for the purposes of paragraph 4(a)(ii) of the Policy:

- (i) before any notice to [the respondent] of the dispute, [the respondent's] use of, or demonstrable preparations to use, the [disputed] domain name or a name corresponding to the [disputed] domain name in connection with a *bona fide* offering of goods or services; or
- (ii) [the respondent] (as an individual, business, or other organization) [has] been commonly known by the [disputed] domain name, even if [the respondent has] acquired no trademark or service mark rights; or

(iii) [the respondent is] making a legitimate noncommercial or fair use of the [disputed] domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

As regards the first and third circumstances set out above, the disputed domain name resolves to a website for “10X Capital Peru” that offers investment services, which is the same type of services that the Complainant offers. The Respondent’s website repeatedly displays the terms “10X Capital”, including with a stylized X partly in blue in a way that is very similar to the way in which the Complainant displays the 10X CAPITAL mark on its own website. The website title also includes the terms “10X Capital” followed by the word “Peru”. This all gives the impression that the Respondent is the Peruvian affiliate of the Complainant. However, the Complainant submits that the Respondent has received no authorization from it to use or register the 10X CAPITAL mark, including as part of the disputed domain name. In view of these circumstances, the Panel considers that the Complainant has made a *prima facie* case that the Respondent is not using the disputed domain name in connection with a *bona fide* offering of goods or services, nor making a legitimate noncommercial or fair use of the disputed domain name.

The Respondent individual’s name is Josue Emanuel Velasquez Pereda, who is a founder of 10X Capital Peru. The Registrar’s Whois database includes “10XCAPITALPE” in the registrant name, which appears to be an abbreviation of that business name, but the Panel finds that is not sufficient in itself to give rise to rights or legitimate interests. There is no other evidence besides the Respondent’s own website and Instagram account, and possibly a WhatsApp group profile, that the Respondent has been known as “10XCAPITALPE” or “10X Capital Peru” and even in these instances the Respondent uses a logo that imitates the Complainant’s logo, giving the false impression that he is an affiliate of the Complainant, which does not give rise to rights or legitimate interests in the disputed domain name. There is no evidence that the Respondent has been commonly known by the disputed domain name.

In summary, the Panel considers that the Complainant has made a *prima facie* case that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Respondent failed to rebut that *prima facie* case because he did not respond to the Complaint.

Therefore, based on the record of this proceeding, the Panel finds that the Complainant has satisfied the second element in paragraph 4(a) of the Policy.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy provides that certain circumstances, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith. The fourth circumstance is as follows:

(iv) by using the [disputed] domain name, [the respondent has] intentionally attempted to attract, for commercial gain, Internet users to [the respondent’s] website or other online location, by creating a likelihood of confusion with the complainant’s mark as to the source, sponsorship, affiliation, or endorsement of [the respondent’s] website or location or of a product or service on [the respondent’s] website or location.

As regards registration, the disputed domain name was registered on May 4, 2021, three months prior to the registration of the Complainant’s trademark on August 3, 2021. The Panel recalls that, where a respondent registers a domain name before the complainant’s trademark rights accrue, panels will not normally find bad faith on the part of the respondent. See [WIPO Overview 3.0](#), section 3.8.1. However, there is an exception to that general proposition in certain limited circumstances where the facts of the case establish that the respondent’s intent in registering the disputed domain name was to capitalize unfairly on the complainant’s nascent trademark rights. See [WIPO Overview 3.0](#), section 3.8.2.

The Panel considers that the facts of the present case fall within the above exception. The Complainant filed its trademark application on June 6, 2019 and that application was pending at the time when the Respondent registered the disputed domain name. Although the Complainant fails to substantiate its claim to have launched its website in 2016 or to have made its first use of the mark in commerce in 2018, archived screenshots show that its website was active and displayed the 10X CAPITAL mark at least as early as May 16, 2019, two years prior to the registration of the disputed domain name.² The Complainant provides copies of press releases published by third party media outlets in 2020 using the name “10X Capital” regarding an initial public offering by a company apparently related to the Complainant, which was also prior to the registration of the disputed domain name. The Complainant has made multiple portfolio investments with multiple parties. The way in which the Respondent displays the 10X CAPITAL mark on its website (with a stylized X partly in blue) is remarkably similar to the way in which the Complainant uses that mark on its own website, and clear evidence of targeting. The Respondent offers investment services, which is the same type of services that the Complainant offers. In view of these circumstances, the Panel is persuaded that the Respondent intended to capitalize on the Complainant’s nascent trademark rights in the 10X CAPITAL mark when he registered the disputed domain name.

As regards use, the disputed domain name resolves to a website for “10X Capital Peru” that offers investment services, which is the same type of services that the Complainant offers. This use is for commercial gain. The website gives the false impression that the Respondent is the Peruvian affiliate of the Complainant. Given the findings in Section 6B above, the Panel finds that the Respondent, by using the disputed domain name, has intentionally attempted to attract, for commercial gain, Internet users to his website, by creating a likelihood of confusion with the Complainant’s mark as to the source, sponsorship, affiliation, or endorsement of his website or of a product or service on his website, within the terms of paragraph 4(b)(iv) of the Policy.

Therefore, the Panel finds that the disputed domain name has been registered and is being used in bad faith. The Complainant has satisfied the third element in paragraph 4(a) 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 disputed domain name <10xcapitalpe.com> be transferred to the Complainant.

/Matthew Kennedy/
Matthew Kennedy
Sole Panelist
Date: June 14, 2022

² The Panel notes its general powers articulated *inter alia* in paragraphs 10 and 12 of the Rules and has searched for screenshots of the Complainant’s website in the publicly available Internet archive at web.archive.org in order to verify the Complainant’s claim regarding the launch date of its website. The Panel considers this process of verification useful in assessing the Complainant’s claim. See [WIPO Overview 3.0](#), section 4.8.