

## **ADMINISTRATIVE PANEL DECISION**

Business Debt Solutions, Inc. v. Domains By Proxy, LLC / michael  
puderbeutel  
Case No. D2022-0313

### **1. The Parties**

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

The Respondent is Domains By Proxy, LLC, United States / michael puderbeutel, United States.

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

The disputed domain name <bizcapllc.com> 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 disputed domain name. On February 1, 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 February 8, 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 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 the Respondent of the Complaint, and the proceedings commenced on February 17, 2022. In accordance with the Rules, paragraph 5, the due date for Response was March 9, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on March 11, 2022.

The Center appointed Evan D. Brown 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**

The Complainant provides financial consulting services in the field of commercial financing. It owns the mark BIZCAP, which it has registered in the United States (Registration No. 5707497, registered on March 26, 2019). The Complainant asserts that it has used the BIZCAP mark since 2002, and submitted evidence showing use at least as early as 2015. The disputed domain name was registered on October 4, 2017. The Respondent set up a website at the disputed domain name to purportedly offer financing services. At the date of this Decision, the disputed domain name resolves to a page showing pay-per-click links.

#### **5. Parties' Contentions**

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

The Complainant contends that the disputed domain name is identical or confusingly similar to the Complainant's trademark; that the Respondent has no rights or legitimate interests in respect of the disputed domain name; and that the disputed domain name was registered and is being used in bad faith.

##### **B. Respondent**

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

#### **6. Discussion and Findings**

To succeed, the Complainant must demonstrate that all of the elements listed in paragraph 4(a) of the Policy have been satisfied: (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights, (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. The Panel finds that all three of these elements have been met in this case.

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

This element requires the Panel to consider two issues: first, whether the Complainant has rights in a relevant mark; and, second, whether the disputed domain name is identical or confusingly similar to that mark. This element under the Policy functions primarily as a standing requirement. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.7.

A registered trademark provides a clear indication that the rights in the mark shown on the trademark certificate belong to its respective owner. See *Advance Magazine Publishers Inc., Les Publications Conde Nast S.A. v. Voguechen*, WIPO Case No. [D2014-0657](#). The Complainant has demonstrated its rights in the BIZCAP mark by providing evidence of its trademark registration.

The disputed domain name incorporates the BIZCAP mark in its entirety. This is sufficient for showing confusing similarity under the Policy. It is standard practice when comparing a disputed domain name to a complainant's trademarks, to not take the extension into account. See [WIPO Overview 3.0](#) at 1.11.1 ("The applicable Top Level Domain ("TLD") in a domain name (e.g., ".com", ".club", ".nyc") is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test.").

The Panel finds that the Complainant has established this first element under the Policy.

## B. Rights or Legitimate Interests

The Panel evaluates this element of the Policy by first looking to see whether the Complainant has made a *prima facie* showing that the Respondent lacks rights or legitimate interests in respect of the disputed domain name. If the Complainant makes that showing, the burden of production of demonstrating rights or legitimate interests shifts to the Respondent (with the burden of proof always remaining with the Complainant).

On this point, the Complainant asserts, among other things, that: (1) it has not authorized the Respondent to use the BIZCAP mark in the disputed domain name, (2) use of the BIZCAP mark in the disputed domain name is not a noncommercial or fair use, and (3) the Respondent has not been known by the Complainant's BIZCAP mark.

The Panel finds that the Complainant has made the required *prima facie* showing. The Respondent has not presented evidence to overcome this *prima facie* showing. And nothing in the record otherwise tilts the balance in the Respondent's favor.

Furthermore, the nature of the disputed domain name, incorporating the Complainant's widely known trademark and the letters "llc" carries a risk of implied affiliation and cannot constitute fair use as it effectively impersonates or suggests sponsorship or endorsement by the Complainant. See [WIPO Overview 3.0](#), section 2.5.1.

Accordingly, the Panel finds that the Complainant has established this second element under the Policy.

## C. Registered and Used in Bad Faith

The Policy requires a complainant to establish that the disputed domain name was registered and is being used in bad faith. The Policy describes several non-exhaustive circumstances demonstrating a respondent's bad faith registration and use. Under paragraph 4(b)(iv) of the Policy, a panel may find bad faith when a respondent "[uses] the domain name to intentionally attempt to attract, for commercial gain, Internet users to [respondent's] website or other online location, by creating a likelihood of confusion with complainant's mark as to the source, sponsorship, affiliation, or endorsement of [respondent's] website or location or a product or service on [the respondent's] website or location".

Absent any response to contradict the Complainant's assertions, the Panel finds it more likely than not, based on the Complainant's use of its mark in commerce prior to the registration of the disputed domain name, that the Respondent was aware of the mark when it registered the disputed domain name. In the circumstances of this case, such a showing is sufficient to establish bad faith registration of the disputed domain name.

The facts indicate that the Respondent is using the disputed domain name in bad faith, by using it to intentionally attempt to divert, for commercial gain, Internet users to one or more competing websites in an effort to confuse and mislead consumers. *Deutsche Lufthansa AG v. Domain Admin, Whois Privacy Corp / Ryan G Foo, PPA Media Services*, WIPO Case No. [D2015-2346](#); *Net2phone Inc. v. Dynasty System Sdn Bhd*, WIPO Case No. [D2000-0679](#). The services purportedly offered at the disputed domain name are similar to those offered by the Complainant under its BIZCAP mark. This indicates an attempt on the part of the Respondent to confuse and mislead consumers.

For these reasons, the Panel finds that the Complainant has successfully met this third UDRP element.

## 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 <bizcapllc.com> be transferred to the Complainant.

*/Evan D. Brown/*

**Evan D. Brown**

Sole Panelist

Date: April 8, 2022