

ADMINISTRATIVE PANEL DECISION

Capital Bay Funding, LLC v. Capital Bay Funding LLC, Capital Bay Funding LLC

Case No. D2025-1080

1. The Parties

Complainant is Capital Bay Funding, LLC, United States of America (“United States” or “US”), represented by Nelson Mullins Riley & Scarborough LLP, United States.

Respondent is Capital Bay Funding LLC, Capital Bay Funding LLC, United States.

2. The Domain Name and Registrar

The disputed domain name <capitalbayfunding.com> is registered with Wix.com Ltd. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on March 15, 2025. On March 17, 2025, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On March 19, 2025, 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 Complainant on March 20, 2025, 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 March 21, 2025.

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 March 25, 2025. In accordance with the Rules, paragraph 5, the due date for Response was April 14, 2025. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on April 15, 2025.

The Center appointed Frederick M. Abbott as the sole panelist in this matter on April 25, 2025. 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.

In its initial review of the Complaint filed by Complainant in this proceeding, the Panel considered that Complainant had not provided legally sufficient evidence to establish common law or unregistered rights in a trademark. Respondent did not file a response. In view of the fact that Respondent appeared to be engaging in abusive conduct with respect to Complainant, and notwithstanding that Complainant had not yet demonstrated common law rights in a trademark, the Panel through Administrative Panel Procedural Order No.1 of May 9, 2025 ("Procedural Order No. 1"), after quoting relevant provisions of [WIPO Overview 3.0](#), sec. 1.7, stated:

"Complainant has presented virtually no evidence of use of the alleged trademark CAPITAL BAY FUNDING in commerce in the United States or elsewhere. By its own assertion, Complainant has no website presence and has not made public records of its alleged funding activities. The mere fact of establishment of an LLC with a specific name does not constitute "use in commerce" of that name for trademark use purposes. The sole evidence provided by Complainant of use of the alleged trademark is on a website form hosted by a third-party business (<invstor.com>) in which Complainant's founder briefly describes his investment interests, but without listing any business in which Complainant or its founder has invested. This de minimis use does not satisfy the criteria referenced in [WIPO Overview 3.0](#), sec. 1.3, for the establishment of acquired distinctiveness in an unregistered trademark.

Respondent's bad faith intent in registering the disputed domain name identical to Complainant's registered company name, should it be found, cannot substitute for Complainant's failure to provide legally significant evidence of use of CAPITAL BAY FUNDING in commerce from the standpoint of establishing unregistered trademark rights.

Accordingly, to ensure that the Parties are treated with equality and that each Party is given a fair opportunity to present its case, the Panel orders as follows, pursuant to paragraphs 10(a) and 10(b) of the Rules for Uniform Domain Name Dispute Resolution Policy (the "Rules"):

1. Complainant shall have until May 16, 2025, to provide additional evidence that might satisfy the relevant criteria for demonstrating unregistered rights in a trademark, which it has not done so far in this proceeding.

Complainant requested an extension of the deadline to file its response to Procedural Order No. 1 due to scheduling issues, which resulted in the granting of a one-week extension, Complainant filed an initial Response to Procedural Order No.1 dated May 17, 2025, and followed with a Declaration of Jorge Romero, dated May 23, 2025. The Panel will revert to these responsive documents as appropriate.

4. Factual Background

Complainant is a limited liability company established on September 3, 2021, in the State of Florida, United States. Complainant asserts that it was formed to invest in other companies to achieve a targeted rate of return on its investments, and that it is a private company without a website or public business presence. Complainant states that it has been providing service to clients since its founding, investing in startups with high growth potential, established small to mid-sized businesses, franchises and companies with stability. Complainant has provided its web listing profile on invstor.com using the name of its founder for contact, which includes a statement by its founder regarding the types of businesses in which he invests, but without identifying any specific investments. There is a "button" for contacting the founder/investor.

Complainant does not present evidence of any trademark registrations in the United States or elsewhere.

According to the Registrar's verification, Respondent is registrant of the disputed domain name. According to the Whois report, the disputed domain name was registered on November 23, 2022. There is no evidence on the record of this proceeding that any party other than Respondent has owned or controlled the disputed domain name since its creation date.

Respondent has used the disputed domain name to direct Internet users to a website with the header "CAPITAL BAY FUNDING" that purports to offer business loans, auto loans, private lending and investments, and which solicits information from Internet users (including through loan application forms made available on that website). Respondent's website lists the address associated with Complainant's LLC registration in the State of Florida, but it lists telephone numbers that are not associated with Complainant. Complainant's founder asserts that an unnamed third party contacted him by telephone regarding funds that this third party expected to receive from Complainant. Complainant's founder knew that Complainant had not been involved in the purported transaction referenced by that unknown third-party caller, which led Complainant to research and discover the existence of Respondent's website at the disputed domain name. Complainant contacted the Registrar, which apparently took down Respondent's website, but subsequently restored it.

In response to Procedural Order No. 1 ("Procedural Order Response"), Complainant provided a Declaration from the Manager of Complainant ("Managers Declaration"). That Declaration was not accompanied by documentary evidence whether in the form of digital files, images or otherwise. Quoting directly from the Manager's Declaration:

"4. Examples of Complainant's activities include opening a bank account with Veritex Community Bank.
5. The physical checks associated with Complainant's account with VeritexCommunity Bank account display the Capital Bay Funding trade name on the checks.
6. Capital Bay Funding has entered into a credit agreement, security agreement, and a promissory note with Castillo LLC. Capital Bay Funding, however, cannot provide any documentation related to these agreements because of confidentiality clauses in said agreements.
7. Capital Bay Funding has entered into a service agreement with LA Vallette Capital to provide financial and management services. La Vallete is a lending company providing acquisition and renovation financing to the New Jersey real estate investor community."

There is no evidence of any association between Complainant and Respondent, commercial or otherwise, on the record of this proceeding.

5. Parties' Contentions

A. Complainant

Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

Notably, Complainant contends that it is the owner of unregistered trademark rights in CAPITAL BAY FUNDING, and that the disputed domain name is identical or confusingly similar to that trademark. In its Procedural Order Response, Complainant specifically contended that: (1) trade name protection is afforded upon the same basic principles as applied to trademarks and service marks in general, and that the most common example of a trade name is a designation used as a corporate name; (2) CAPITAL BAY FUNDING "is actually an inherently distinctive term and thus does not require a showing of secondary [sic] in order to establish rights in the trade name and/or trademark and Complainant need only establish use in commerce", which includes advertising of services, and; (3) reiterated a legal argument made in the Complaint that Respondent's targeting of Complainant establishes that Complainant had established public recognition for its trademark.

Complainant argues that Respondent lacks rights or legitimate interests in the disputed domain name because: (1) Respondent has not been commonly known by the disputed domain name; (2) Complainant has not authorized Respondent to use its trademark, and Respondent is not a licensee of Complainant; (3) there is a high risk of implied affiliation between Complainant and Respondent; (4) Respondent has not made or prepared to make a bona fide offer of goods or services prior to notice of this dispute; (5) Respondent has provided false contact details in its record of registration, and; (6) Respondent has not made a legitimate noncommercial use of the disputed domain name.

Complainant alleges that Respondent registered and is using the disputed domain name in bad faith because: (1) mere registration of the disputed domain name identical to Complainant's trademark creates a presumption of bad faith; (2) Respondent has used the disputed domain name to impersonate or pass itself off as Complainant, suggesting a desire to make commercial gain; (3) the provision of false contact information or impersonation of another is sufficient to establish bad faith, and; (4) there is no plausible good faith reason behind Respondent's registration of the disputed domain name, which includes its association with mail servers.

Complainant requests the Panel to direct the Registrar to transfer the disputed domain name to Complainant.

B. Respondent

Respondent did not reply to Complainant's contentions.

6. Discussion and Findings

The Center formally notified the Complaint to Respondent at the email and physical addresses provided in its record of registration. A courier delivery to one of the physical addresses provided by Respondent in its record of registration was successfully completed, but noting that this physical address is the address of Complainant. A second courier delivery to Respondent was undeliverable because of inaccurate and inadequate address information provided in its record of registration. It appears that email transmission to Respondent's listed addresses may have been at least partially successful. The Center took those steps prescribed by the Policy and the Rules to provide notice to Respondent, and those steps are presumed to satisfy notice requirements.

Paragraph 4(a) of the Policy sets forth three elements that must be established by a complainant to merit a finding that a respondent has engaged in abusive domain name registration and use and to obtain relief. These elements are that:

- (i) the disputed domain name 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 disputed domain name; and
- (iii) the disputed domain name has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between Complainant's trademark and the disputed domain name. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), sec. 1.7.

Complainant asserts unregistered or common law trademark rights in the United States as the basis for establishing standing. The Panel quotes below in relevant part from [WIPO Overview 3.0](#), sec. 1.3, regarding establishment of unregistered trademark rights, which section has been referenced by Complainant:

“To establish unregistered or common law trademark rights for purposes of the UDRP, the complainant must show that its mark has become a distinctive identifier which consumers associate with the complainant’s goods and/or services.

Relevant evidence demonstrating such acquired distinctiveness (also referred to as secondary meaning) includes a range of factors such as (i) the duration and nature of use of the mark, (ii) the amount of sales under the mark, (iii) the nature and extent of advertising using the mark, (iv) the degree of actual public (e.g., consumer, industry, media) recognition, and (v) consumer surveys.

Specific evidence supporting assertions of acquired distinctiveness should be included in the complaint; conclusory allegations of unregistered or common law rights, even if undisputed in the particular UDRP case, would not normally suffice to show secondary meaning. In cases involving unregistered or common law marks that are comprised solely of descriptive terms which are not inherently distinctive, there is a greater onus on the complainant to present evidence of acquired distinctiveness/secondary meaning.

The fact that a respondent is shown to have been targeting the complainant’s mark (e.g., based on the manner in which the related website is used) may support the complainant’s assertion that its mark has achieved significance as a source identifier.”

In its initial pleading, Complainant presented virtually no evidence of use of the alleged trademark CAPITAL BAY FUNDING in commerce in the United States or elsewhere. By its own assertion, Complainant has no website presence and has not made public records of its alleged funding activities. The sole evidence provided by Complainant of use of the alleged trademark was on a website form hosted by a third-party business (“invstor.com”) in which Complainant’s founder briefly describes his investment interests, but without listing any business in which Complainant or its founder has invested.

Complainant has argued that CAPITAL BAY FUNDING is inherently distinctive and that in consequence Complainant is not required to demonstrate acquired distinctiveness or secondary meaning in that term to be identified as a common law trademark.¹ Complainant may be correct that if CAPITAL BAY FUNDING was inherently distinctive it would not need to demonstrate that the term had achieved sufficient recognition by the relevant public to serve a trademark function. However, beyond a conclusory statement that CAPITAL BAY FUNDING is inherently distinctive, Complainant has not offered any explanation regarding how the Panel should join that conclusion. To the Panel, the predominant term describing the activities of Complainant is “funding”, a generic or commonly descriptive term that precisely describes the type of business in which Complainant claims to be engaged.² The term “funding” is preceded by two common descriptive terms, which do not detract from the meaning of the predominant term “funding” identifying the nature of Complainant’s activities. The term “capital” is directly associated with and descriptive of assets that Complainant alleges to be making available,³ although it could also be used in a geographic sense for a city serving as the seat of government.⁴ The term “bay” is used, inter alia, for storage, as in “storage bay”, and

¹See, e.g., *Two Pesos, Inc. v. Taco Cabana, Inc.*, 505 U.S. 763.

²See, e.g., Wikipedia.org, “Funding is the act of providing resources to finance a need, program, or project.”, <https://en.wikipedia.org/wiki/Funding>.

³ See, e.g., Cambridge Dictionary, “money and possessions, especially a large amount of money used for producing more wealth or for starting a new business”, <https://dictionary.cambridge.org/us/dictionary/english/capital>.

⁴https://en.wikipedia.org/wiki/Capital_city.

may also describe a geographic feature.⁵ But whether CAPITAL BAY is being used to describe a geographic location, or to describe a container from which funds may be drawn, in neither case does it modify FUNDING such that a viewer of that term is in any doubt regarding what the activity pursued by Complainant is. If an analogous term “Capital Bay Bank” were to be claimed for common law protection, would the public be in any doubt as to the type of business associated with that term? No exercise of “imagination” is required in the case of CAPITAL BAY FUNDING such as would be the case for a suggestive (and therefore inherently distinctive) term.⁶ CAPITAL BAY FUNDING is not arbitrary or fanciful.

[WIPO Overview 3.0](#), sec. 1.7, is prepared with a global legal audience in mind, and it suggests that there is something of a sliding scale under which the establishment of unregistered trademark rights is dependent on acquired distinctiveness or secondary meaning, and that “In cases involving unregistered or common law marks that are comprised solely of descriptive terms which are not inherently distinctive, there is a greater onus on the complainant to present evidence of acquired distinctiveness/secondary meaning.” As a matter of US trademark law, if a term is inherently distinctive, it does not require evidence that the public recognizes the term as an exclusive source of goods or services to establish common law rights.⁷ But that does not in any case address the requirement of use in commerce as Complainant has acknowledged in its Procedural Order Response.

The Panel begins with a reminder that it has *not* decided that CAPITAL BAY FUNDING is inherently distinctive. In the Panel’s view, the term is descriptive of an enterprise providing funding or capital resources. Therefore, under US trademark law it is held to a standard of establishing secondary meaning by demonstrating recognition among the public in the relevant field. On the sliding scale identified in [WIPO Overview 3.0](#), sec. 1.7, there is a greater onus on a complainant to unregistered or common law trademark rights to provide evidence of acquired distinctiveness or secondary meaning. As a matter of US trademark law, a party claiming common law trademark rights must provide evidence of recognition among the relevant public of the trademark term as an exclusive source of goods or services.⁸ Such types of evidence are well summarized in [WIPO Overview 3.0](#), sec. 1.7, which is consistent with US trademark law:

“Relevant evidence demonstrating such acquired distinctiveness (also referred to as secondary meaning) includes a range of factors such as (i) the duration and nature of use of the mark, (ii) the amount of sales under the mark, (iii) the nature and extent of advertising using the mark, (iv) the degree of actual public (e.g., consumer, industry, media) recognition, and (v) consumer surveys.”

Complainant has provided only token evidence to support recognition by the public of its asserted common law trademark. In its initial Complaint it provided a web listing profile on <invstor.com> using the name of its founder for contact, which included a brief statement by its founder regarding the types of businesses in which he invests, but without identifying any specific investments. There was a “button” for contacting the founder/investor. Complainant refers to this as advertising. Even accepting that characterization, the Panel considers it a de minimis effort insufficient to evidence recognition by the public to establish secondary meaning or acquired distinctiveness for a common law trademark.

Complainant draws an analogy between trademarks and trade names, arguing that the same standards for acquired distinctiveness for trademarks apply to trade names, and pointing out that the names of businesses are commonly protected as trade names under unfair competition law. But the Policy does not encompass

⁵See, e.g., Dictionary.com, “3. a compartment, as in a barn for storing hay.”, <https://www.dictionary.com/browse/bay>. “Bay” is a term with multiple common meanings, including as a geographic feature.

⁶See *Abercrombie and Fitch Co. v. Hunting World, Inc.*, 537 F.2d 4 (1976), at, e.g. 11.

⁷See, e.g., *Two Pesos, Inc. v. Taco Cabana, Inc.*, 505 U.S. 763.

⁸See *Qualitex Co. v. Jacobson Products Co., Inc.*, 514 US 159 (1995), e.g., at 163.

trade name protection as such. Of course, it may be that a business uses the same term as a trademark and a trade name. This is quite common. But the Policy does not address trade names.

Perhaps Complainant is contending that because it registered its business as an LLC in Florida this meant that it had acquired rights as a trademark (i.e., because it had registered its trade name). But registration of a corporate entity in Florida is not the equivalent of trade name registration in Florida, which is accomplished through a separate register (see Florida Fictitious Name Registration, <https://dos.fl.gov/sunbiz/start-business/efile/fl-fictitious-name-registration/>, and 2024 Florida Statutes, Title XLVI, 865.09).

Establishing an LLC with a specific name does not constitute commercial use of that name so as to establish recognition by the public. It is a ministerial act of registration with a government authority that does not purport to confer trademark rights.

We come to the final hurdle for Complainant: whether the alleged common law trademark is inherently distinctive or descriptive. There is a fundamental requirement under US law for the establishment of rights in a trademark which is “use in commerce”, which requirement is expressly prescribed by the Lanham Act and consistently acknowledged in federal case law. The Lanham Act, in 15 U.S.C. § 1127, defines a trademark as “any word, name, symbol, or device, or any combination thereof— (1) *used* by a person, or (2) which a person has a bona fide intention to use in commerce and applies to register on the principal register established by this chapter, to identify and distinguish his or her goods, including a unique product, from those manufactured or sold by others and to indicate the source of the goods, even if that source is unknown.” [Italics added]

Unregistered trademark rights can only be established through use in commerce. See, e.g., *Zazu Designs v. L’Oreal, S.A.*, 979 F.2d 499 (7th Cir. 1992); *Allard Enterprises, Inc. v. Advanced Programming Resources, Inc.* 146 F.3d 350 (6th Cir. 1998).⁹ Such use must be more than de minimis or token (see *Social Technologies LLC v. Apple Inc.*, 4 F.4th 811, at 818 (2021)(“ We consider the totality of the circumstances to determine whether the “use in commerce” requirement has been satisfied so as to establish rights under the Lanham Act).¹⁰ Token use and minimal or isolated transactions are insufficient to establish or maintain common law trademark rights.

Having been advised by the Panel in Procedural Order No.1 that its single brief and largely non-informative posting on a third-party website was considered by the Panel not to constitute evidence sufficient to establish common law or unregistered trademark rights, Complainant provided the Manager’s Declaration. The

⁹See also *Mountain Top Beverage Group, Inc. v. Wildlife Brewing N.B., Inc.* 338 F.Supp.2d 827 (S.D. Ohio, 2003): “The Allard Court [146 F. 3d 350] went on to explain, ‘In the absence of registration, rights to a mark traditionally have depended on the very same elements that are now included in the statutory definition: the bona fide use of a mark in commerce that was not made merely to reserve a mark for later exploitation.’ Id. at 357. ‘The talismanic test for use in commerce remains whether or not the use was sufficiently public to identify or distinguish the marked goods in an appropriate segment of the public mind as those of the adopter of the mark.’ *Chere Amie v. Windstar*, No. 01–cv–0040, 2002 WL 460065 at *4 (March 26, 2002, S.D.N.Y.) (quoting *Marvel Comics Ltd. v. Defiant*, 837 F.Supp. 546, 548 (S.D.N.Y.1993)) (internal quotations omitted)”.

¹⁰4 F.4th at 817: “It is well-established that use in commerce within the meaning of the Lanham Act requires use of a genuine character. We have discussed in detail Congress’s amendment of the Lanham Act in 1988 (also known as the Trademark Law Revision Act of 1988 or ‘TLRA’), which added the ‘bona fide’ and ‘ordinary course of trade’ requirements to 15 U.S.C. § 1127 to strengthen ‘use in commerce’ and to ‘eliminate “token use” as a basis for registration.’ Chance, 242 F.3d at 1156–57, 1159 (internal quotation omitted) (‘Congress amended the Lanham Act by redefining the term “use in commerce” to mean ‘the bona fide use of a mark in the ordinary course of trade, and not made merely to reserve a mark.’ ‘); see Trademark Law Revision Act of 1988, Pub. L. No. 100-667, § 134, 102 Stat. 3935, 3948, amending 15 U.S.C. § 1127; see also *Brookfield Commc’ns, Inc., v. W. Coast Ent. Corp.*, 174 F.3d 1036, 1051–52 (9th Cir. 1999).⁸ Mere adoption of a mark without bona fide use in commerce, in an attempt to reserve rights for the future, is insufficient to establish rights in the mark under the Lanham Act. Chance, 242 F.3d at 1157, 1159”.

elements set out in that Manager's Declaration are listed in Factual Background, above. The listing in the Manager's Declaration does not suffice to establish "use in commerce" of the claimed common law trademark by Complainant. Complainant has failed to provide digital files, digital photographs, scans or other concrete evidence showing the uses claimed by the Manager, even though certain of these uses could obviously have been provided without compromising business confidentiality (such as a scanned printed check, with account numbers obscured). The Manager says that one set of documents cannot be provided because of confidentiality clauses included in the agreements, but it seems odd that he could name the parties to the agreements and the fact of the agreements in the Declaration, but he could not provide a single page if only listing the parties with other aspects obscured. For the third alleged transaction there is no explanation for why digital files or other evidence than the Manager's assertion could not be provided.

Panelists in UDRP proceedings routinely are presented with statements by respondents seeking to establish rights or legitimate interests in disputed domain names to the effect they were preparing a business or other activity, but without providing concrete direct evidence of such preparations. While there might be some rare exceptional cases, such statements regarding bona fide preparations for use are not considered adequate without supporting documentary evidence of preparations. See, e.g., *Helen Fielding v. Anthony Corbert aka Anthony Corbett*, WIPO Case No. [D2000-1000](#). As stated in [WIPO Overview 3.0](#), sec. 2.2, "If not independently verifiable by the panel, claimed examples of use or demonstrable preparations to use the domain name in connection with a bona fide offering of goods or services cannot be merely self-serving but should be inherently credible and supported by relevant pre-complaint evidence."

This Panelist has not previously confronted a situation in which a party seeking to establish unregistered or common law rights in a trademark chose to do so by simply declaring use without underlying documentation (save here evidence of one brief posting on a third-party website). The Panel finds it particularly problematic in this case because the Panel went back to Complainant in Procedural Order No. 1 specifically requesting evidence. Complainant responded with a legal argument and the Declaration. Panelists under the UDRP should not be in a position of deciding that one "mere declarant" is more or less forthright or credible than another, particularly because UDRP proceedings do not include witness examination.

The Panel does not accept as evidence of use in commerce the mere statements of the Manager. It does not further express an opinion about the unsubstantiated assertions regarding use in commerce.

The Panel determines that Complainant has failed to provide evidence of use in commerce sufficient to establish recognition by the relevant public and concomitant secondary meaning in a trademark, and has failed to provide evidence to meet the "use in commerce" requirement for a common law trademark that is a bedrock requirement of US trademark law.

Complainant has argued, and the Panel agrees, that the intentional adoption of a third-party business identifier may constitute evidence that the subject identifier has acquired secondary meaning. Complainant argues that because Respondent used Complainant's business name in the disputed domain name it follows that the combination term has acquired secondary meaning. See, e.g., *Ferrari S.P.A. v. Roberts*, 944 F.2d 1239 (6th Cir. 1991); *Beatriz Ball, L.L.C. v. Barbagallo Company, L.L.C.*, 40 F.4th 308, 320 (5th Cir. 2022). The Panel notes that the registrant information used by Respondent in registration of the disputed domain name was available from State of Florida Division of Corporations website searchable records of annual reports and articles of incorporation (see generally, <https://dos.fl.gov/sunbiz/search/>). Use by Respondent of that information can reasonably be understood as recognition of the corporate existence of Complainant by Respondent, but that does not mean that it recognized that Complainant had established (common-law) trademark rights, nor does it serve as a substitute for Complainant to show its claimed rights.

Respondent's bad faith intent in registering the disputed domain name identical to Complainant's registered company name cannot substitute for Complainant's failure to provide legally significant evidence of use of CAPITAL BAY FUNDING in commerce. Therefore, even assuming that Respondent's registration of the disputed domain name provided some notion of secondary meaning, it does not provide evidence of use in commerce.

The Panel finds the first element of the Policy has not been established.

Because Complainant has failed to establish rights in a trademark, and the establishment of such rights is required for standing in this UDRP proceeding, the Panel does not further consider the second and third elements.

Complainant has provided evidence that it has been targeted by Respondent. Complainant appears to be the subject of unfair, if not unlawful, business practices by Respondent. The Policy was designed with limitations. One of those limitations is that successful causes of action are predicated on the establishment of trademark rights by those alleging abusive domain name registration and use. While Complainant may have a valid claim in court, Complainant has not satisfied that threshold burden under the Policy.

Although the result here may appear “harsh”, the Panel should not expand or rewrite the Policy because of a problematic result for Complainant. Panelists adhere to a consistent standard. The requirement of demonstrating rights in a trademark is an immutable element of the Policy.

7. Decision

For the foregoing reasons, the Complaint is denied.

/Frederick M. Abbott/

Frederick M. Abbott

Sole Panelist

Date: June 3, 2025