

## **ADMINISTRATIVE PANEL DECISION**

Cantor Fitzgerald Securities v. james dublin, james dublin  
Case No. D2023-1889

### **1. The Parties**

The Complainant is Cantor Fitzgerald Securities, United States of America (“United States” or “U.S.”), represented by Kilpatrick Townsend & Stockton LLP, United States.

The Respondent is james dublin, james dublin, Spain.

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

The disputed domain name <cantorfitzgerald.bond> 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 27, 2023. On April 27, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 27, 2023, 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 (Privacy Service provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to the Complainant on May 1, 2023 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 May 3, 2023.

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 May 10, 2023. In accordance with the Rules, paragraph 5, the due date for Response was May 30, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on June 12, 2023.

The Center appointed Peter Burgstaller as the sole panelist in this matter on June 8, 2023. 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 a global financial services firm and owner of numerous trademark registrations containing the words “Cantor Fitzgerald” around the world, *inter alia*

- U.S. Registration No. 2,682,691, for services in class 36, registered since February 4, 2003 (Annex G to the Complaint);
- U.S. Registrations No. 4,765,183, for services in class 36, registered since June 30, 2015 and 6,262,174, for services in class 36, registered since February 2, 2021 (Annex G to the Complaint);
- European Union Registration No. 0003283041, registered since February 1, 2005, for goods and services in classes 9, 36 and 38 (Annex H to the Complaint);

The Complainant moreover owns the domain name <cantor.com>, registered December 27, 1993 (Annex J to the Complaint).

The disputed domain name was used as email address providing information regarding financial services to third parties under the CANTOR FITZGERALD mark and logo (Annex J to the Complaint). Moreover, the disputed domain name resolved and currently resolves to a website with click through linking pages with offerings that are completely unrelated to the Complainant’s services (Annex M to the Complaint; the Panel’s independent research on June 24, 2023).

The disputed domain name was registered on April 7, 2023 (Annex A to the Complaint).

#### 5. Parties’ Contentions

##### A. Complainant

The Complainant, formed over 75 years ago, has become widely recognized as an international leader in global financial services, including, without limitation, broker-dealer, domestic and international equities, fixed income and currencies, real estate, and investment banking services. The Complainant is particularly well-known for its securities work. An innovator in computer-based bond brokerage, the Complainant is hailed as a premier dealer of U.S. government agency and U.S. treasury securities, in addition to credit securities, asset-backed and mortgage-backed securities, and emerging market credit securities. The Complainant has over 1800 employees serving more than 5000 institutional clients in 35 locations around the globe.

The Complainant has used the marks CANTOR FITZGERALD and CANTOR together with other terms to name or promote a number of its business divisions, affiliates, products, and services, including, without limitation, Cantor Fitzgerald Securities, Cantor Fitzgerald Europe, Cantor Fitzgerald (Hong Kong) Capita; Markets Limited, and Cantor Fitzgerald Ireland. The Complainant owns various trademark registrations containing CANTOR FITZGERALD throughout the world, including, without limitation, U.S., the European Union, Australia, United Kingdom, Canada and China.

The disputed domain name is identical to the Complainant’s trademark CANTOR FITZGERALD, since it incorporates the trademark in its entirety.

The Respondent has no legitimate interest in the disputed domain name: The disputed domain name is not, nor could it be contended to be, a legitimate name or nickname of the Respondent, nor is it in any other way identified with or related to any rights or legitimate interest of the Respondent. There is no relationship between the Complainant and the Respondent giving rise to any license, permission, or other right by which the Respondent could own or use any domain name containing the mark CANTOR FITZGERALD. The Respondent is neither 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 registered and used the disputed domain name in bad faith and in a fraudulent way: the Respondent has registered and is using the disputed domain name in bad faith for commercial gain and to benefit from the goodwill and notoriety associated with the Complainant's CANTOR FITZGERALD and CANTOR marks. Here, the Respondent's bad faith registration of the disputed domain name is established by the fact that it completely incorporates and emphasizes the Complainant's exact CANTOR FITZGERALD mark, and was registered long after the Complainant's rights in its CANTOR FITZGERALD marks were established.

Since registering the disputed domain name, the Respondent has used such as part of a fraudulent scheme in which individuals are contacted by an individual posing as a representative of the Complainant, using the name "Cantor Fitzgerald Ireland" promoting a purported government treasury bond offering with a guaranteed yield. As part of the scheme, the targeted individuals are then sent an email detailing the alleged government treasury bond offering in an effort to induce the individual into making an investment. The emails sent prominently feature the CANTOR FITZGERALD mark and logo, and use the Complainant's actual office address in Dublin, Ireland.

Moreover, the Respondent has used the disputed domain name with click through linking pages with offerings that either directly compete with the Complainant or for products and services that are completely unrelated to the Complainant and its CANTOR FITZGERALD mark.

## **B. Respondent**

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

## **6. Discussion and Findings**

Under paragraph 4(a) of the Policy, a complainant can only succeed in an administrative proceeding under the Policy if the following circumstances are met:

- (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 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 identity or confusing similarity involves a reasoned but relatively straightforward comparison between the complainant's trademark and the disputed domain name. This test typically involves a side-by-side comparison of the disputed domain name and the textual components of the relevant trademark to assess whether the mark is recognizable within the disputed domain name. See section 1.7 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

The Complainant submitted evidence, which incontestably and conclusively establishes rights in the mark CANTOR FITZGERALD.

In the present case, the disputed domain name <cantorfitzgerald.bond> is identical to the CANTOR FITZGERALD mark in which the Complainant has rights since the Complainant's mark is not only recognizable in the disputed domain name but it is taken over in its entirety without adds or omissions; technically conditioned aspects like the omission of a space between two words (here between "cantor" and "firzerald") will not prevent a finding of identity under the first element of the Policy.

Finally, it has also long been held that generic Top-Level Domains are generally disregarded when evaluating the confusing similarity under the first element.

Therefore, the Panel finds that the Complainants have satisfied paragraph 4(a)(i) of the Policy.

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

While the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a disputed domain name may result in the often impossible task of “proving a negative”, requiring information that is often primarily within the knowledge or control of the respondent. As such, 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 disputed domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element (see section 2.1 of the [WIPO Overview 3.0](#)). Here, the Complainant has put forward a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name, which has not been rebutted by the Respondent.

Furthermore, the nature of the disputed domain name, comprising the Complainant’s mark in its entirety, along with its use as email address providing information regarding financial services to third parties by an individual posing as representative of the Complainant by using the CANTOR FITZGERALD mark and logo, cannot be considered fair use as it falsely suggests an affiliation with the Complainant that does not exist.

Noting the above and in the absence of any Response or allegations from the Respondent, the Panel finds that the Complainant has satisfied paragraph 4(a)(ii) of the Policy.

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

As stated in many decisions rendered under the Policy (e.g. *Robert Ellenbogen v. Mike Pearson*, WIPO Case No. [D2000-0001](#)) both conditions, registration and use in bad faith, must be demonstrated; consequently, the Complainant must show that:

- the disputed domain name was registered by the Respondent in bad faith, and
- the disputed domain name is being used by the Respondent in bad faith.

(i) The Complainant has established rights in the mark CANTOR FITZGERALD, long before the registration of the disputed domain name. Further, the fact that the Complainant is a global provider of financial services and the Respondent used the disputed domain name as email address to inform third parties about such services by using the CANTOR FITZGERALD mark and logo and pretending to be a representative of the Complainant makes it inconceivable for this Panel that the Respondent registered and used the disputed domain name without knowledge of the Complainant’s rights; this inevitably leads to the necessary inference of bad faith.

This finding is supported by the fact that the disputed domain name incorporates the Complainant’s registered and distinctive trademark entirely. All of which in fact indicate that the Respondent must have been aware of the Complainant’s business and trademark when registering the disputed domain name.

Therefore, the Panel is convinced that the disputed domain name was registered in bad faith by the Respondent.

(ii) The Complainant has put forward evidence that the disputed domain name was used as email address by an individual posing as a representative of the Complainant, using the name “Cantor Fitzgerald Ireland”, the CANTOR FITZGERALD mark and logo and promoting a purported government treasury bond offering with a

guaranteed yield. This is bad faith misleading and deception of internet users by pretending a false identity in order to gain financial advantage.

Moreover, the Respondent has used and is still using the disputed domain name with click through linking pages with offerings for products and services that are completely unrelated to the Complainant and its CANTOR FITZGERALD mark. In doing so, the Respondent has intentionally attempted to attract Internet users to its website for commercial gain, by creating a likelihood of confusion with the Complainant's trademarks as to the source, sponsorship, affiliation or endorsement of its website according to paragraph 4(b)(iv) of the Policy.

All these findings lead this Panel to the conclusion that the disputed domain name has been registered and used in bad faith under paragraph 4(a)(iii) 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 <cantorfitzgerald.bond> be transferred to the Complainant.

*/Peter Burgstaller/*

**Peter Burgstaller**

Sole Panelist

Date: June 28, 2023