

ADMINISTRATIVE PANEL DECISION

Winton Capital Management Limited and Winton Capital US LLC v. Luis Fernando Polo ABello
Case No. D2023-2903

1. The Parties

The Complainant is Winton Capital Management Limited, United Kingdom (“UK”) and Winton Capital US LLC, United States of America (“United States” or “USA”), represented by Withers LLP, UK.

The Respondent is Luis Fernando Polo ABello, United States.

2. The Domain Name and Registrar

The disputed domain name <wintoncapitallc.com> is registered with Google LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on July 6, 2023. On July 7, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On July 7, 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 (Contact Privacy Inc. Customer 7151571251) and contact information in the Complaint. The Center sent an email communication to the Complainant on July 10, 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 amendment to the Complaint on July 10, 2023.

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 July 12, 2023. In accordance with the Rules, paragraph 5, the due date for Response was August 1, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on August 3, 2023.

The Center appointed William A. Van Caenegem as the sole panelist in this matter on August 11, 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 in this proceeding refer collectively to Winton Capital Management Limited (the first Complainant), a company incorporated in the United Kingdom, and Winton Capital US LLC (the second Complainant), a company incorporated in the state of Delaware, USA. The Complainant is a global investment management firm with a focus on statistical and mathematical inference in financial markets. Both the first and second Complainant are wholly owned subsidiaries of the Winton Group Ltd and conduct business by reference to the WINTON trademarks. The Panel will refer to both Complainants as the Complainant herein below.

The First Complainant is the proprietor of a portfolio of trademarks for the term “winton” in various jurisdictions. The registrations most relevant to this Complaint are as follows: WINTON Australia Trademark Registration No. 956968 registered on January 10, 2008 (class 36); WINTON European Union Trade Mark Registration No. 006165286 registered on July 7, 2008 (class 36); WINTON India Trademark registration No. 3663166 registered on October 25, 2017 (class 36); WINTON Japan Trademark Registration No. 956968 registered on June 17, 2011 (class 36); WINTON Switzerland Trademark Registration No. 733556 registered on July 12, 2019 (class 36); WINTON United Arab Emirates Trademark Registration No. 305871 registered on June 27, 2019 (class 36); and WINTON UK No. 00906165286 registered on July 7, 2008 (class 36).

The Complainant is also the registered proprietor of the domain names <winton.com>; <wintoncapital.us>; <wintoncapitalgroup.com>; <wintoncapital.com>; <wintoncapitalfunds.com>; and <wintoncapitalholdings.com>. The Complainant’s primary domain is <winton.com>.

The disputed domain name, <wintoncapitalllc.com>, was registered on August 25, 2022 and resolves to a website that purportedly offers financial services by reference to the name “winton” but that is not associated with the Complainant.

5. Parties’ Contentions

A. Complainant

The Complainant provides, amongst other things, investment and asset management services to large institutional investors. The Complainant and its group of companies trade on more than 100 global futures markets and has offices around the world.

The “winton” and “winton capital” names have been in constant use by the Complainant since 1997. The Complainant says the WINTON and WINTON CAPITAL names are distinct and are terms that members of the public would readily associate with the Complainant. It maintains that the Complainant has built substantial goodwill and reputation in its WINTON and WINTON CAPITAL brands, and trademarks. The Complainant’s material establishes that it has been referenced extensively in media, is a sponsor of events and prizes and has won multiple awards in its line of business of funds management. It manages over USD10 billion in assets and has over 180 staff.

The Complainant points out that the disputed domain name contains the Complainant’s registered trademarks (or, at least, the dominant elements thereof) WINTON and WINTON CAPITAL in their entirety. Further, the Complainant notes that the disputed domain name is almost identical, and confusingly similar, to the corporate name of the second Complainant. The Complainant points out that the disputed domain name

incorporates its registered trademark as a prefix, which is normally considered to be the most memorable element. The Complainant brings the Panel's attention to section 1.7 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)") which states that "in cases where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to that mark for purposes of UDRP standing". The Complainant also argues that the fact that the Respondent has targeted it by purporting to offer financial services further supports the position that the Complainant has acquired goodwill and reputation in the "winton" and "winton capital" names which have achieved significance as source identifiers. The Complainant adds that given the substantial reputation of the "winton" and "winton capital" names, consumers and the public in general are likely to believe that the disputed domain name and any email addresses associated with it are affiliated with, authorised, or otherwise endorsed by the Complainant.

On November 30, 2022, the Complainant sent an email to Luis Polo (also known as Luis Fernando Polo Abello) using the contact details on the website to which the disputed domain name resolves. The Complainant demanded that the website be taken down and all use of the "winton" name to be ceased. The Respondent (Luis Polo) replied on the same day, acknowledging the Complainant's rights and confirming that action would be taken. The Complainant attaches a copy of this correspondence with Luis Polo to the Complaint, but notes that to date no action has been taken by the Respondent. The Complainant and their solicitors have since written to Luis Polo reiterating the requests in the Complainant's email of November 30, 2022, but no response has been received. The Complainant points out that the Respondent has not claimed to have legitimate rights in the "winton" or "winton capital" names, but rather stated "we completely understand what you suggest" and "we are willing to change our name", which supports the Complainant's position that the Respondent does not have any rights or legitimate rights in respect of the disputed domain name.

The Complainant says that the Respondent has no rights or authorization to use the trademarks nor is it an authorized licensee or in any way associated with the Complainant. Given the significant goodwill that attaches to WINTON and WINTON CAPITAL, the Complainant says that it is inconceivable that a trader would randomly adopt these terms, in combination, and use them to ostensibly offer financial services other than to create an impression of an association with the Complainant. The Complainant concludes that there is no evidence to suggest that the Respondent has a *bona fide* intention to use the disputed domain name; has not been commonly known by the disputed domain name prior to its registration; nor made a legitimate noncommercial or fair use of the disputed domain name. As both the Complainant and the Respondent are located in the USA, the Complainant suggests that the concept of constructive notice applies, meaning the Respondent had knowledge of the Complainant's pre-existing trademark rights and registrations under USA trademark law at the time the disputed domain name was registered.

The Complainant points out that the website to which the disputed domain name resolves gives a correspondence address which is located in Miami, Florida and that the same website purports to be operated by "Winton Capital LLC". The latter is a limited liability corporation registered in Florida, with the same address as the correspondence address given on the Website, and with the Respondent Polo Abello (the Respondent with whom the Complainant corresponded) as its agent and sole officer. The Complainant notes that the same website lists various services supposedly provided by the Respondent, including (i) "financing", (ii) "legal tech", and (iii) "trading". The Complainant contends that the Respondent does not have the necessary regulatory approval in the United States that would allow him to conduct any of these activities, as further detailed on the said website, legally in that country. As the Respondent is purporting to provide services for which it is not licensed, it is engaging in illegitimate activities, which implies registration and use in bad faith of the disputed domain name (referencing section 3.1.4 of the [WIPO Overview 3.0](#)).

The Complainant also notes that given the widespread and extensive reputation that adhered to its WINTON and WINTON CAPITAL trademarks, it is inconceivable that the Respondent was unaware of the Complainant's rights at the time of registration of the disputed domain name.

The Complainant concludes by pointing out that the Respondent has not made any claims to having legitimate rights in the disputed domain name. The Respondent acknowledged the Complainant's rights and indicated a willingness to cease use of the "winton" and "winton capital" names and yet failed to take any action in this regard, and thus continues to use the disputed domain name with full knowledge of the Complainant's rights, demonstrating bad faith.

B. Respondent

The Respondent did not reply to the Complainant's contentions. However, the Panel notes that prior the UDRP proceeding, the Complainant submitted evidence of communications between the Parties in which the Respondent admitted that the Complainant has exclusive rights over the WINTON trademark in relation to financial services in the United States and that it will cease using the disputed domain name.

6. Discussion and Findings

A. Identical or Confusingly Similar

The Complainant has established its exclusive rights in the WINTON and WINTON CAPITAL trademarks registered in multiple jurisdictions to the satisfaction of the Panel. The Complainant's WINTON and WINTON CAPITAL trademarks are immediately recognizable in the disputed domain name. This fact alone means that the requirements of confusing similarity are met, as has been consistently held by previous UDRP panels. The addition of the abbreviation "LLC" does not prevent a finding of confusing similarity.

Therefore the Panel holds that the disputed domain name is confusingly similar to the WINTON and WINTON CAPITAL trademarks of the Complainant.

B. Rights or Legitimate Interests

The Respondent has not replied to any of the contentions of the Complainant. There is no indication before the Panel that the Respondent is known by the name "winton" or "winton capital" or the disputed domain name. The disputed domain name resolves to a website purportedly operated by Winton LLC of which the Respondent is the sole officer and agent. However, according to the correspondence put before the Panel, and not countered by the Respondent, the latter has accepted the assertions of the Complainant that it alone has exclusive rights over the WINTON trademark in relation to financial services in the United States. It would appear to be the case that operating using the terms "winton" or "winton capital" in relation to financial services in the United States in the manner the Respondent has done would infringe the Complainant's rights in these marks. It also appears to be the case, on the balance of probabilities that the Respondent is purportedly offering services via the website to which the disputed domain name resolves that do not have the necessary official licenses and are therefore illegitimate. Again, the Respondent has not availed himself of the opportunity to contradict these contentions. It appears to the Panel therefore that it is more likely than not that the Respondent has acquired the disputed domain name and established the relevant website with a view to deceiving Internet users into thinking the latter is or was established with the authorization of the Complainant. This type of activity does not give rise to rights or legitimate interests.

Therefore the Panel holds that the Respondent has no rights or legitimate interests in the disputed domain name.

C. Registered and Used in Bad Faith

The Complainant has established that the registration of its WINTON and WINTON CAPITAL marks substantially predates the registration of the disputed domain name. It has also established that these marks benefit from a substantial and widespread reputation in relation to financial services, including in the United States. Internet searches in the relevant locations as undertaken by the Complainant reveal that almost all results refer to the Complainant. It is therefore persuasive to conclude that the Respondent had constructive

or actual notice of the Complainant's rights at the relevant time especially taking into account the registration of a domain name almost identical to the Complainant's trademark . This is further supported by the fact that the Respondent established a website purportedly offering *inter alia*, financial services, the same activity that the Complainant engage in. Such use amounts to an attempt to obtain a financial advantage from the false suggestion that the website is associated with the Complainant and affirms the Respondent's bad faith. The Respondent also appears to have accepted that it had no rights to the WINTON or WINTON CAPITAL marks and it appears that the services offered at the relevant website were unregulated and therefore not in accordance with the legal requirements applicable in the United States.

Therefore, the Panel holds that the disputed domain name was registered and is being used in bad faith.

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 <wintoncapitalllc.com> be transferred to the Complainant.

/William A. Van Caenegem/

William A. Van Caenegem

Sole Panelist

Date: August 25, 2023