

ADMINISTRATIVE PANEL DECISION

Ellerston Capital Limited v. Ellerston Capital
Case No. D2023-3453

1. The Parties

The Complainant is Ellerston Capital Limited, Australia, represented by Quinn Emanuel Urquhart & Sullivan, LLP, Australia.

The Respondent is Ellerston Capital, United States of America (“United States”).

2. The Domain Name and Registrar

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

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on August 14, 2023. On August 14, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On August 14, 2023, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details.

The Center verified that 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 August 18, 2023. In accordance with the Rules, paragraph 5, the due date for Response was September 7, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on September 8, 2023.

The Center appointed Ian Lowe as the sole panelist in this matter on September 26, 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 an investment management firm based in Australia. It is an Australian Public Company. It operates a website at "www.ellerstoncapital.com" through which it conducts its business activities providing financial services and funds management services, predominantly in the Australian market.

The Complainant is the registered proprietor of Australia trademark number 1190597 ELLERSTON registered on March 19, 2008, in Class 36 in respect of financial services and funds management services.

The Domain Name was registered on May 8, 2022. It resolves to a website (the "Respondent's Website") purporting to be operated by "Ellerston Capital Limited" offering a number of "Trading Plans" with a range of available profits. The website claims to "assess a variety of different markets and trading instruments to create maximum profitability for our community" and states that "We utilize unique intra-day and swing trading strategies to provide profitability for our community in the financial markets".

The website also states that "We are a legal company registered in AUSTRALIA providing our services to the members all around the world". The only company with the name "Ellerston Capital Limited" registered with the Australian Securities & Investments Commission is the Complainant. The Respondent's Website offers copies of two certificates. One purports to be issued by an Australian organization and states that the Respondent has established a management system for investment activities and management of capital funds. The second purports to have been issued by Financial Market Relations Regulation Center to "Ellerston Capitals Ltd", with the incorrect/alternative spelling of "Capitals". Alongside the words "Listed in system Register:" appear the terms "ISO : 2015" rather than the date the certificate was issued.

The Respondent's Website invites users to register and deposit funds for investment.

The address of the Respondent in the Whols register is a residential address in San Francisco, California, United States. The contact address of the Respondent on its website is in Paddington, New South Wales, Australia.

5. Parties' Contentions

A. Complainant

The Complainant contends that the Domain Name is confusingly similar to its ELLERSTON trademark (the "Mark"), that the Respondent has no rights or legitimate interests in respect of the Domain Name, and that the Respondent registered and is using the Domain Name in bad faith within the meaning of the Policy.

B. Respondent

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

6. Discussion and Findings

For this Complaint to succeed in relation to the Domain Name the Complainant must prove that:

- (i) the 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 Domain Name; and
- (iii) the Domain Name has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

The Complainant has uncontested rights in the Mark, both by virtue of its trademark registrations and as a result of the goodwill and reputation acquired through its use of the Mark over a number of years. Ignoring the generic Top-Level Domain (“gTLD”) “.com”, the Domain Name comprises the entirety of the ELLERSTON mark together with the words “capital limited”. In the Panel’s view, the addition of these words does not prevent a finding of confusing similarity between the Domain Name and the Mark. Accordingly, the Panel finds that the Domain Name is confusingly similar to a trademark in which the Complainant has rights.

B. Rights or Legitimate Interests

The Complainant has made out a strong *prima facie* case that the Respondent could have no rights or legitimate interests in respect of the Domain Name. The Respondent is not authorized by the Complainant to use the Domain Name and there is no evidence that the Respondent is commonly known by the Domain Name. The Respondent has not used the Domain Name in connection with a *bona fide* offering of goods or services, but rather has used it for a website purporting to be a company with the same name as the Complainant, also registered in Australia, offering financial services and products. The Panel is satisfied that the Respondent has set up the website with a view to confusing Internet users into believing that the Respondent’s Website was operated by or authorised by the Complainant and very likely to phish for personal information or for other fraudulent purposes. Such intent is reflected in the composition of the Domain Name, which comprises the entirety of the Complainant’s name, clearly associating the Domain Name with the Complainant. Such activity cannot possibly give rise to rights or legitimate interests.

The Respondent has chosen not to respond to the Complaint or to take any steps to counter the *prima facie* case established by the Complainant. In the circumstances, the Panel finds that the Respondent does not have any rights or legitimate interests in respect of the Domain Name.

C. Registered and Used in Bad Faith

In light of the use of the Complainant’s name as the Domain Name and the nature of the Respondent’s website, the Panel is in no doubt that the Respondent had the Complainant and its rights in the ELLERSTON mark in mind when it registered the Domain Name. The Panel considers that the Respondent has registered and used the Domain Name to deceive Internet users into believing that the Domain Name is operated or authorized by the Complainant, and to attract Internet users by creating a likelihood of confusion with the ELLERSTON mark, very likely with a view to phishing for personal information or other fraudulent purposes, and no doubt for commercial gain. The Panel considers that this amounts to paradigm bad faith registration and use.

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 Domain Name <ellerstoncapitallimited.com> be transferred to the Complainant.

/Ian Lowe/

Ian Lowe

Sole Panelist

Date: October 18, 2023