

ADMINISTRATIVE PANEL DECISION

Virgin Enterprises Limited v. Patrick Brown

Case No. D2023-1499

1. The Parties

The Complainant is Virgin Enterprises Limited, United Kingdom, represented by AA Thornton IP LLP, United Kingdom.

The Respondent is Patrick Brown, Ghana.

2. The Domain Name and Registrar

The disputed domain name <virginnmoney.com> (the “Domain Name”) is registered with PDR Ltd. d/b/a PublicDomainRegistry.com (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on April 5, 2023. On April 6, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On April 8, 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 April 19, 2023. In accordance with the Rules, paragraph 5, the due date for Response was May 9, 2023. The Respondent did not submit a response. Accordingly, the Center notified the Respondent’s default on May 10, 2023.

The Center appointed A. Justin Ourso III as the panelist in this matter on May 12, 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 UK company that is part of the Virgin Group and owns the well-known VIRGIN trademark and the other VIRGIN trademarks of all the companies in the Virgin Group, a portfolio consisting of approximately 3,500 trademark applications and registrations in over 150 countries. Among the Virgin Group businesses is Virgin Money, which offers financial services at its website and at over 70 branded stores across the UK, and operates a mobile application offering financial products.

The Complainant owns EU registration 1141309 for its VIRGIN trademark, entered on May 21, 2012, in Class 36 for financial services provided via the Internet, banking, and provision of financial information, among other related and similar services, and for other goods and services in other classes; UK registration UK00002177329 for its VIRGIN MONEY trademark, entered on May 21, 1999, in Class 36 for financial services, banking services, internet banking, and financial information services, among other related and similar services, and for other goods and services in other classes; and UK registration UK00003449484 for its VIRGIN MONEY+design figurative trademark, entered on March 27, 2020, in Class 36 for financial affairs, banking services, internet banking, and financial information services, among other related and similar services, and for other goods and services in other classes, among other EU and UK registrations for hundreds of other goods and services.

The Complainant owns the domain name <virgin.com>, registered on September 10, 1997. Since 2000, it has operated the website to which this domain name resolves, which contains links to websites for most of the businesses that it operates, including its Virgin Money business. It also owns the domain name <virginmoney.com>, registered on August 26, 1998, which resolves to “www.uk.virginmoney.com,” where it operates its online Virgin Money business.

The Respondent registered the Domain Name on March 20, 2023, without any authorization from the Complainant. Prior to the filing of the Complaint the Domain Name resolved to a website that mimicked the Complainant’s website and provided a feature for uploading the documents of visitors. After the filing of the Complaint, browsers were warning attempted visitors to the site. For example, the Chrome browser warns: “Deceptive site ahead. Attackers on virginnmoney.com may trick you into doing something dangerous like installing software or revealing your personal information (for example, passwords, phone numbers, or credit cards).” The Edge browser warns: “This site has been reported as unsafe” and “Microsoft recommends that you don’t continue to this site. It has been reported to Microsoft for containing phishing threats which may try to steal personal or financial information.” The Firefox browser warns: “Deceptive site ahead. Firefox blocked this page because it may trick you into doing something dangerous like installing software or revealing personal information like passwords or credit cards.”

5. Parties’ Contentions

A. Complainant

In addition to facts set forth in the Factual Background in Part 4 above, the Complainant contends the following.

Regarding the element of confusing similarity with a trademark in which it has rights, the Complainant contends that it owns trademark rights in its VIRGIN and its VIRGIN MONEY trademarks, which have gained a significant reputation for financial and banking services; the Domain Name incorporates the Complainant’s VIRGIN and VIRGIN MONEY trademarks in their entirety, with the additional letter “N” an obvious intentional misspelling that could easily be added by Internet users as a typographical error and easily overlooked by Internet users who encounter the Domain Name; and the Domain Name is nearly identical to its VIRGIN MONEY trademark and confusingly similar to both its trademarks.

Regarding the element of rights or legitimate interests in the Domain Name, among other contentions, the Complainant contends that the Respondent’s website copies its Virgin Money website homepage almost

identically, including using the Complainant's trademarks, menu buttons, and images and text that are protected by copyright, which infringes its copyrights; the Respondent's site provides an online form for Internet users to upload documents, which the Respondent likely uses for phishing; the site will deceive Internet users into thinking that the Complainant's Virgin Money business operates the site, which will divert its consumers or prospective consumers; consumer harm from phishing will disrupt the Complainant's Virgin Money business; the Complainant has not authorized the Respondent to use its name; the Respondent's copying the Complainant's website, including its trademarks, shows that the Respondent lacks any rights or legitimate interests in the Domain Name; the Respondent's site is not a fair or legitimate use of the Domain Name, is not a *bona fide* offering of goods or services, and is not a legitimate noncommercial or fair use of the Domain Name; and for all of these reasons the Respondent does not have any rights or legitimate interests in the Domain Name.

Regarding the element of bad faith registration and use of the Domain Name, among other contentions, the Complainant contends that the facts show that the Respondent has acted intentionally to deceive consumers into thinking that the Complainant's Virgin Money business operates or is connected to the Respondent's website; the website will divert consumers from the Complainant's Virgin Money business, tarnish its reputation, and disrupt its business; the site's document upload feature is likely for phishing to obtain information for fraudulent commercial gain; this is a bad faith use of the Domain Name and a good faith use is not conceivable; the Respondent's copying the Complainant's website homepage shows that the Respondent was aware of the Complainant and its Virgin Money business when it registered the Domain Name; and the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant's marks as to source, sponsorship, or endorsement.

The Complainant requested transfer of the Domain Name.

B. Respondent

The Respondent did not submit a response to the Complaint.

6. Discussion and Findings

A. The Effect of the Respondent's Default

If a respondent does not submit a response to a complaint, a panel decides the dispute based upon the complaint. Rules, paragraphs 5(f) and 14(a). Because a complainant has the burden of proof, Policy, paragraph 4(a), the Complainant must still prove the elements of a claim to obtain the requested relief, notwithstanding the Respondent's default. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.3.

In the absence of exceptional circumstances, a respondent's failure to respond to a complaint requires that a panel draw the inferences from this failure that it considers proper. Rules, paragraph 14(b). The Panel finds that no exceptional circumstances exist for the failure of the Respondent to submit a response. Accordingly, the Panel infers that the Respondent does not deny the facts alleged and the contentions urged by the Complainant based upon these facts and will draw all reasonable inferences that are proper from the evidence and the facts found by the Panel. *Id.*

Although the Panel may draw negative inferences from the Respondent's default, the Complainant may not rely on conclusory allegations and must support its allegations with evidence to prove its claim. *Id.*

B. The Elements of a Claim

A complainant must prove three elements to obtain relief: (i) the domain name is identical or confusingly similar to a trademark in which the complainant has rights; (ii) the respondent has no rights or legitimate

interests in the domain name; and (iii) the respondent registered and is using the domain name in bad faith. Policy, paragraph 4(a).

(i). Identical or Confusingly Similar

On the first element, the Panel finds that the Domain Name <virginnmoney.com> is confusingly similar to the Complainant's VIRGIN and VIRGIN MONEY trademarks. The Domain Name incorporates each trademark in its entirety, and the trademarks are readily recognizable within the Domain Name, notwithstanding the addition of the word "money," with respect to the VIRGIN trademark, and, notwithstanding the addition of the letter "N" between the words "virgin" and "money," This additional letter is easily overlooked, especially because it is identical to the preceding letter. [WIPO Overview 3.0](#), sections 1.7 and 1.8.

Accordingly, the Panel concludes that the Complainant has proven the first element: the Domain Name is confusingly similar to a trademark in which it has rights.

(ii). Rights or Legitimate Interests

The Respondent has not claimed the existence of any circumstance under the Policy, paragraph 4(c), that demonstrates that a respondent has rights to, or legitimate interests in, a domain name. The Complainant, on the other hand, has shown that it established its trademark rights before the Respondent registered the Domain Name, it has not authorized the Respondent to use its trademarks, and the Respondent may be using its site for phishing. These constitute *prima facie* a showing that the Respondent lacks any rights or legitimate interests in the Domain Names under the Policy, paragraph 4(a)(ii), shifting the burden of production on this second element to the Respondent to come forward with relevant evidence proving rights or legitimate interests in the domain name. [WIPO Overview 3.0](#), section 2.1. The Respondent has not submitted any evidence to rebut the *prima facie* showing.

Additionally, the Panel finds that the Registrar identified the Registrant as "Patrick Brown," which does not resemble the Domain Name, and provided an email address for the Respondent that does not resemble the Domain Name, which corroborate that the Respondent is not known by the Domain Name; the Respondent failed to provide any evidence of actual or planned good faith use, or even to respond to the Complaint; and the Domain Name resolves to a website that not only competes with the Complainants' website, but also mimics the homepage of the Complainant's Virgin Money website, including using its trademark and its figurative design trademarks, which is not a *bona fide* commercial use, a noncommercial use, or a fair use of the Domain Name.

Accordingly, the Panel concludes that the Complainant has proven the second element: the Respondent lacks rights or legitimate interests in the Domain Name.

(iii). Registered and Used in Bad Faith

The Policy provides that the following circumstance is "evidence of the registration and use of a domain name in bad faith: [. . .] by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your web site . . . , by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of your web site or location or of a product or service on your web site." Policy, paragraph 4(b)(iv).

Panels have consistently found that the mere registration of a domain name that is identical or confusingly similar to a well-known trademark, can create a presumption of bad faith registration, which here is un rebutted by the Respondent. [WIPO Overview 3.0](#), section 3.1.4. Here, the Respondent also used the Complainant's well-known trademarks on the Respondent's website. The Panel finds this conclusive evidence that the Respondent must have been aware of the Complainant's trademarks and of its rights in its marks at the time that the Respondent registered the Domain Name, and that the Respondent registered the Domain Name in bad faith. Rules, paragraph 14(b); [WIPO Overview 3.0](#), section 3.2.2.

Additionally, Panels have consistently found that clear typosquatting may support an inference of bad faith registration. Here, the Complainant has alleged that the Domain Name contains an intentional misspelling of the Complainant's VIRGIN MONEY trademark. The Respondent has not explained the selection of this highly unusual Domain Name, which happens to be, visually, virtually identical to the Complainant's VIRGIN MONEY trademark. Panels have found that typosquatting, coupled with an absence of rights or legitimate interests, tends to show bad faith. [WIPO Overview 3.0](#), section 3.2.1.

Also, and importantly, the Respondent's website mimicked the homepage of the Complainant's Virgin Money business website. In view of the Complainant's allegation that it has not authorized the Respondent to use its marks, the Respondent's failure to respond to the Complaint is telling. Panels have found that a respondent's lack of an explanation, coupled with an absence of rights or legitimate interests, tends to show bad faith. [WIPO Overview 3.0](#), section 3.2.1.

In addition to the facts found and recited above, the Panel finds that it cannot conceive of a plausibly legitimate explanation for the selection of the Domain Name; the Respondent's website displays the Complainant's well-known trademarks, expressly promoting an affiliation with the Complainant, and offers competing services, in effect passing off the site as associated with the Complainant; and the Respondent's registration and use of the Domain Name and the site are intended to attract, misleadingly and deceptively, customers and potential customers of the Complainant for the Respondent's commercial gain.

All these findings, collectively, compel the Panel to conclude that the Respondent intentionally registered the Domain Name in bad faith to take unfair advantage of the Complainant's trademarks and that the Respondent is using the Domain Name in bad faith intentionally to attract Internet users to its site for commercial gain by creating a likelihood of confusion with the Complainant's trademarks as to the source of the sites or the source of the services offered on the sites, in violation of the Policy, paragraph 4(b)(iv). [WIPO Overview 3.0](#), sections 3.1.4, 3.2.1, and 3.2.2.

Accordingly, the Panel concludes that the Complainant has proven the third element: the Respondent registered and is using the Domain Name 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 Domain Name, <virginnmoney.com> be transferred to the Complainant.

/A. Justin Ourso III/

A. Justin Ourso III

Panelist

Date: May 26, 2023