

ADMINISTRATIVE PANEL DECISION

Virgin Enterprises Limited v. Emmanuel Ofili
Case No. D2023-1923

1. The Parties

The Complainant is Virgin Enterprises Limited, United Kingdom (“UK”), represented by AA Thornton IP LLP, United Kingdom.

The Respondent is Emmanuel Ofili, Nigeria.

2. The Domain Name and Registrar

The disputed domain name <virginatlanticcourier.com> is registered with NameSilo, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on April 28, 2023. On April 28, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 28, 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 (Redacted for Privacy) 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 4, 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 16, 2023. In accordance with the Rules, paragraph 5, the due date for Response was June 5, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on June 6, 2023.

The Center appointed Delia-Mihaela Belciu as the sole panelist in this matter on June 9, 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

Virgin Enterprises Limited, the Complainant in the present proceedings, is a member of a group of companies collectively known as “the Virgin Group”.

The Virgin Group operates in a diverse range of sectors covering, among others financial services, music & entertainment, travel & leisure, and space. According to the Complainant, there are currently more than 40 VIRGIN branded businesses, which have over 50 million customers worldwide and employ more than 60,000 people across five business sectors and five continents.

According to the Complainant, it has built up a considerable online presence and is the registered proprietor of over 5,000 domain names consisting of or incorporating the VIRGIN mark. As per the Complainant’s assertions, it has operated a website at “www.virgin.com” since 2000 to promote the activities of the VIRGIN Group and its businesses, ventures and foundations. The “www.virgin.com” website contains links to the specific web pages for most of the companies in the VIRGIN Group.

In 1984, the Complainant launched its first passenger and cargo airlines under the brand VIRGIN ATLANTIC with the aim of providing a high quality and value for money service. The Complainant provides information about its VIRGIN ATLANTIC passenger and cargo services and booking facilities on its websites at “www.virginatlantic.com” and “www.virginatlanticcargo.com”.

The VIRGIN ATLANTIC cargo service began between London, UK, and New York, United States of America and now offers daily cargo flights to India, China, Africa, America, and the Caribbean connecting more than 350 destinations worldwide.

The Complainant has a large portfolio of trademarks consisting of VIRGIN, in many countries and territories worldwide, including the following:

- European Union Trademark No. 001798560 for VIRGIN, registered on June 5, 2002, for goods and services in classes 09 and 39;
- European Union Trademark No. 001798537 for VIRGIN, registered on June 5, 2002, for goods and services in classes 09 and 39;
- European Union Trademark No. 14030589 for VIRGIN ATLANTIC, registered on October 12, 2015, for goods and services in classes 9, 35, 39, 41, 43, and 44;
- European Union Trademark No. 14030597 for VIRGIN ATLANTIC, registered on October 19, 2015, for goods and services in classes 9, 35, 39, 41, 43, and 44;
- UK Trademark No. UK00003163121 for VIRGIN, registered on July 29, 2016, for goods and services in classes 03, 05, 09, 11, 12, 14, 16, 31, 32, 33, 35, 36, 38, 39, 41, 42, 43, 44 and 45;
- UK Trademark No. UK00915404841 for VIRGIN, registered on December 2, 2016, for goods and services in classes 03, 05, 09, 11, 12, 14, 16, 31, 32, 33, 35, 36, 38, 39, 41, 42, 43, 44 and 45;
- UK Trademark No. UK00001287263 for VIRGIN ATLANTIC, registered on April 3, 1992, for services in class 39; and
- UK Trademark No. UK00003107251 for VIRGIN ATLANTIC, registered on November 20, 2015, for goods and services in classes 09, 35, 39, 41, 43 and 44.

The disputed domain name was registered on April 6, 2023, and it is used in relation to an active website offering cargo services.

5. Parties' Contentions

A. Complainant

The Complainant contends that the disputed domain name is confusingly similar to his VIRGIN and VIRGIN ATLANTIC trademarks as such is comprised of the terms "virgin", "atlantic" and "courier" and therefore incorporates the Complainant's registered marks VIRGIN and VIRGIN ATLANTIC, in their entirety.

The Complainant further asserts that the term "courier" means in English a service, person or entity that transports goods or documents, and so refers to the service for which the Complainant's registered marks have a reputation and significant goodwill. The term "courier", in the Complainant's view, is a clearly descriptive term and is not sufficient to avoid confusion on the part of Internet users, as it will suggest that the disputed domain name provides access to information about or an online location to book the Complainant's well-known Virgin Atlantic cargo services.

For these reasons, the Complainant concludes that the disputed domain name is confusingly similar to its registered marks.

The Complainant further contends that the Respondent does not have any rights or legitimate interests in the disputed domain name for a number of reasons.

The Complainant asserts that the disputed domain name is used in relation to a website which identifies itself as "Virgin Atlantic Courier" in numerous places, that purports to offer logistics, cargo and freight services, using a mark identical to the Complainant's registered marks. The Complainant asserts that the use of these marks without the authorisation of the Complainant is an infringement of the rights in the Complainant's registered marks.

This website provides the contact email address using the disputed domain name as an extension, *i.e.* "[...][@virginatlanticcourier.com](mailto:[...]@virginatlanticcourier.com)". Additionally, the above mentioned website provides several telephone numbers which the Complainant asserts are not genuine phone numbers since they are comprised of an area code plus "123456".

This website also provides several contact addresses for a head office and branch locations in various countries, which, as per the assertions made by the Complainant, correspond in fact, to third parties addresses. The Complainant contends that the above mentioned website also displays the logos of various well-known third-party courier companies. The Complainant further asserts that large portions of text and images found on the website can be seen on various third party websites.

In the Complainant's view, it is confusing for Internet users to obtain correct information regarding the Complainant by sending enquires to the unauthorised email addresses, calling the unauthorised phone numbers or using the inquiry forms available on the website. This is likely to divert actual or prospective consumers away from the Complainant's cargo business, which will be disruptive to the businesses of the Complainant.

The Complainant asserts that, based on its experience of domain names, that the disputed domain name has been registered using its trademarks without authorisation, are likely to be used for phishing purposes to obtain sensitive or personal information for fraudulent commercial gain.

In the Complainant's view, in the event any consumers suffer loss or harm as a result of entering their personal details on these pages, this will cause huge disruption to the Complainant cargo business and is liable to tarnish the significant reputation in the Complainant's registered marks.

The Complainant asserts that the Respondent has not been authorised by the Complainant to be registered any domain name and that there is also no evidence that the Respondent has ever been commonly known

by the disputed domain name or VIRGIN ATLANTIC, has ever used or has plans to use the disputed domain name in connection with a *bona fide* offering of goods or services.

Lastly, in the Complainant's view, it is clear that the Respondent is not making a legitimate noncommercial or fair use of the disputed domain name without intent for commercial gain to misleadingly divert consumers or to tarnish the Complainant's registered marks.

For these reasons, the Complainant concludes that, the Respondent has no rights or legitimate interests in respect of the disputed domain name.

The Complainant further contends that the disputed domain name was registered and is being used in bad faith for a number of reasons.

The Complainant asserts that it is likely that the disputed domain name is being used for phishing purposes. In the event any Internet users suffer harm or loss as a result of phishing carried out using the disputed domain name, unauthorised email addresses or unauthorised phone numbers, this will cause further disruption to the Complainant business and is also liable to tarnish the significant reputation that exists in the Complainant's registered marks.

The Complainant contends that considering the submitted evidence of the significant reputation of the VIRGIN and VIRGIN ATLANTIC brands and the fact that the website, which the disputed domain name resolves to, purports to provide services for which the Complainant's registered trademarks have a significant reputation, it is likely that the Respondent was aware of the Complainant and its cargo business at the time of registering the disputed domain name.

Given the identical or highly similar structure of the domain name involved in previous UDRP proceeding (*Virgin Enterprises Limited v. Slugan Morris, supra*) to that of the disputed domain name, in the Complainant's view, it appears likely that the disputed domain name is connected to the same entity or individual. This is evidence according to the Complainant, that the Respondent is likely engaged in a pattern of bad faith behavior, which is further evidence that the disputed domain name has been registered and used in bad faith.

It is clear in the Complainant's view that by using the disputed domain name, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to the website and the unauthorized email addresses, by creating a likelihood of confusion with the Complainant's registered trademarks as to the source, sponsorship, affiliation, or endorsement of the website.

For all these reasons, the Complainant concludes that, the disputed domain name was registered and is being used in bad faith.

B. Respondent

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

6. Discussion and Findings

In order for the Complainant to succeed, such must prove, according to paragraph 4(a) of the Policy, that:

- (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 with respect to the disputed domain name; and

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

In case all three elements above have been fulfilled, the Panel is able to grant the remedy requested by the Complainant. Thus, the Panel will deal with each of the requirements in turn.

A. Identical or Confusingly Similar

According to paragraph 4(a)(i) of the Policy, the Complainant has to show that the disputed domain name is (i) identical or confusingly similar to a trademark or service mark, (ii) in which the Complainant has rights.

With respect to the requirement of having rights pursuant to paragraph 4(a)(i) of the Policy, the Complainant owns several VIRGIN and VIRGIN ATLANTIC registered trademarks, in several jurisdictions. Consequently, the Panel finds that this requirement is fulfilled.

With regard to the assessment of identity or confusing similarity of the disputed domain name with the VIRGIN and VIRGIN ATLANTIC trademarks, it is generally accepted that this involves a side-by-side comparison of the domain name and the textual components of the relevant trademarks to assess whether the marks are recognizable within the disputed domain name. 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 (see section 1.7 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

The Panel finds that the disputed domain name is confusingly similar to the Complainant's VIRGIN and VIRGIN ATLANTIC trademarks as such incorporates the VIRGIN and VIRGIN ATLANTIC marks in their entirety and the addition of the word "courier", which relates in fact to the business of the Complainant, does not prevent a finding of confusing similarity. The VIRGIN and VIRGIN ATLANTIC marks remains clearly recognizable within the disputed domain name (see section 1.8 of the [WIPO Overview 3.0](#)).

In what concerns the addition of the generic Top-Level Domain ".com", this is not to be taken into consideration when examining the confusing similarity between the Complainant's trademarks and the disputed domain name, as such is viewed as a standard registration requirement and is disregarded under the first element confusing similarity test (see section 1.11 of the [WIPO Overview 3.0](#)).

The Panel therefore finds that the Complainant has satisfied paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

The Complainant is required to make out a *prima facie* case that the Respondent lacks rights or legitimate interests. Once such *prima facie* case is made out, the burden of production shifts to the Respondent to come forward with appropriate allegations or evidence demonstrating rights or legitimate interests in the disputed domain name. If the Respondent fails to come forward with such appropriate allegations or evidence, the Complainant is generally deemed to have satisfied paragraph 4(a)(ii) of the Policy (see section 2.1 of the [WIPO Overview 3.0](#)).

In this case, 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, as the Respondent has not submitted any response.

Thus, based on the available evidence, the Respondent uses the disputed domain name in relation to a website which identifies itself as "Virgin Atlantic Courier", that purports to offer logistics, cargo and freight services, using a mark identical to the Complainant's registered marks, without the Complainant's approval, as well as part of email addresses related to this website, leading thus to confusion for Internet users as to the disputed domain name's affiliation with the Complainant. The registration of the disputed domain name

which incorporates the VIRGIN and VIRGIN ATLANTIC marks of the Complainant in their entirety and the addition of the word “courier” which relates in fact to the business of the Complainant also suggest that such was registered to eventually impersonate or falsely suggest sponsorship or endorsement by the Complainant (see section 2.5.1 of the [WIPO Overview 3.0](#)).

The Complainant has never authorised the Respondent to make use of its VIRGIN and VIRGIN ATLANTIC trademarks in the disputed domain name and there is no evidence that the Respondent has ever been commonly known by the disputed domain name or “Virgin Atlantic Courier”.

The above mentioned conduct does not amount to a *bona fide* offering of goods or services, or to a legitimate noncommercial or fair use of the disputed domain name.

The Panel therefore finds that the Complainant has satisfied paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

Under paragraph 4(a)(iii) of the Policy, a complainant must show that the domain name has been registered and is being used in bad faith.

In this case, the Complainant’s rights to the VIRGIN and VIRGIN ATLANTIC trademarks predate the registration date of the disputed domain name.

The VIRGIN trademark is registered in several jurisdictions and enjoys of significant reputation recognized by previous UDRP panels as well (see *Virgin Enterprises Limited v. Privacy Protection/ LLC Ruslan Khaziev*, WIPO Case No. [D2021-2597](#); and *Virgin Enterprises Limited v. Duygu Mert*, WIPO Case No. [D2011-0632](#)).

In light of the significant reputation of the VIRGIN trademarks, it is not conceivable that the Respondent chose the disputed domain name without knowledge of the Complainant’s cargo businesses and the VIRGIN and VIRGIN ATLANTIC trademarks, which further supports a finding of bad faith registration.

The Respondent’s incorporation of the Complainant’s VIRGIN and VIRGIN ATLANTIC trademarks in their entirety in the disputed domain name, with the addition of the word “courier”, the use of the disputed domain name in relation to a website which identifies itself as “Virgin Atlantic Courier”, using a mark identical to the Complainant’s registered marks, lead the Panel to conclude that such actions by the Respondent were made in order to attract Internet users by creating a likelihood of confusion with the Complainant’s marks. This further supports a finding of bad faith use (see [WIPO Overview 3.0](#), section 3.2.1).

For all these reasons, the Panel finds that the disputed domain name has been registered and is being used in bad faith and that the third element of paragraph 4(a)(iii) of the Policy is fulfilled.

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, <virginatlanticcourier.com>, be transferred to the Complainant.

/Delia-Mihaela Belciu/
Delia-Mihaela Belciu
Sole Panelist
Date: June 23, 2023