

ADMINISTRATIVE PANEL DECISION

Virgin Enterprises Limited v. Sunday Brodon
Case No. D2023-4047

1. The Parties

The Complainant is Virgin Enterprises Limited, United Kingdom, represented by A. A. Thornton & Co., United Kingdom.

The Respondent is Sunday Brodon, United States of America ("United States").

2. The Domain Name and Registrar

The disputed domain name <virginatlantic-courier.com> (the "Disputed Domain Name") is registered with Center of Ukrainian Internet Names (UKRNAMES) (the "Registrar").

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the "Center") on September 27, 2023. On September 28, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On September 29, 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. On October 12, 2023, the Center sent an email communication to the Parties, in English and Ukrainian, regarding the language of the proceeding. The Complainant filed a request for English to be the language of the proceeding on October 13, 2023, while the Respondent did not reply to the Center's email regarding the language of the proceeding.

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 in both English and Ukrainian, and the proceedings commenced on October 18, 2023. In accordance with the Rules, paragraph 5, the due date for Response was November 7, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on November 13, 2023.

The Center appointed Mariia Koval as the sole panelist in this matter on November 20, 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 part of the Virgin Group, a British multinational venture capital conglomerate founded in 1970. The Complainant's business spans a diverse range of sectors covering financial services, health and wellness, music and entertainment, people and planet, telecommunications and media, travel and leisure, and space. The Complainant has over 50 million customers worldwide and employs more than 60,000 people across five business sectors and five continents.

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 Virgin Atlantic Cargo service began between London and New York, and currently offers daily cargo flights to India, China, Africa, the United States, and the Caribbean connecting more than 350 destinations worldwide. In partnership with Delta Cargo and Air France/KLM Cargo, Virgin Atlantic Cargo is a leading transatlantic air cargo service.

Also, Virgin Atlantic Cargo operates a state-of-the-art facility for processing and storing cargo shipments at London Heathrow Airport, which is the largest United Kingdom port by value of cargo passing through. The Virgin Atlantic Cargo airline services saw a growth of 40% in revenue to GBP 448 million for 2021, and Virgin Atlantic transported 207 million tons of cargo in 2021.

The Complainant is the owner of numerous VIRGIN and VIRGIN ATLANTIC trademark registrations (collectively, the "VIRGIN ATLANTIC Trademarks") around the world, among which are:

- European Union Trade mark Registration for VIRGIN, No. 001798537, registered on June 5, 2002, in respect of goods and services in classes 9 and 39;
- United Kingdom Trade mark Registration for VIRGIN, No. UK00915404841, registered on December 2, 2016, in respect of goods and services in classes 3, 5, 9, 11, 12, 14, 16, 31, 32, 33, 35, 36, 38, 39, 41, 42, 43, 44, and 45;
- United Kingdom Trade mark Registration for VIRGIN ATLANTIC, No. UK00001287263, registered on April 3, 1992, in respect of services in class 39;
- European Union Trade mark Registration for VIRGIN ATLANTIC, No. 014030589, registered on October 12, 2015, in respect of goods and services in classes 9, 35, 39, 41, 43, and 44.

The Complainant has built up a considerable online presence and is operating a number of domain names consisting of or incorporating, among others, the VIRGIN ATLANTIC Trademarks, in particular such as <virgin.com>, <virginatlantic.com>, and <virginatlanticcargo.com>. The Complainant has operated its official website "www.virgin.com" since 2000 to promote the activities of the Virgin Group and its businesses, ventures, and foundations. The Complainant also operates pages on various social media platforms, in particular Facebook, X, YouTube, and LinkedIn.

The Disputed Domain Name was registered on September 14, 2023. As at the date of this Decision, the Disputed Domain Name resolves to an active website where a host of logistic management services and supply chain solutions, in particular air freight and warehousing, are offered by the company Virgin Atlantic Courier Service.

5. Parties' Contentions

A. Complainant

The Complainant asserts that the Disputed Domain Name is confusingly similar to the Complainant's VIRGIN ATLANTIC Trademarks. The Disputed Domain Name incorporates the Complainant's VIRGIN ATLANTIC Trademarks in their entirety with addition of the term courier", which is an ordinary English word meaning a service, person or entity that transports goods or documents.

The Complainant claims that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name in view of the following:

- the Disputed Domain Name has not been authorized by the Complainant;
- there is no evidence that the Respondent has ever been commonly known by the Disputed Domain Name or "Virgin Atlantic Courier Service" or has ever used or has plans to use the Disputed Domain Name in connection with a *bona fide* offering of goods or services;
- the Disputed Domain Name is used in relation to a website that purports to offer logistics, cargo, and freight services. The website under the Disputed Domain Name identifies itself as "Virgin Atlantic Courier Service", thereby purporting to offer cargo services under the name similar to the Complainant's VIRGIN ATLANTIC Trademarks;
- the website provides the contact email address "[...]@virginatlantic-courier.com" which incorporates the Complainant's VIRGIN ATLANTIC Trademarks;
- the website provides the false telephone number and regional office contact address which are likely to be used for phishing purposes to obtain sensitive or personal information for fraudulent commercial gain;
- considering the content of the website, it is clear that Internet users will be deceived into thinking that the Disputed Domain Name is operated by or connected to the Complainant or the Virgin Atlantic Cargo business. Actual or prospective customers of the Virgin Atlantic Cargo business may try to contact the Respondent via false email address and/or telephone number in relation to the cargo and courier services offered by Virgin Atlantic Cargo or provide personal details.

The Complainant further contends that the Respondent has registered and is using the Disputed Domain Name in bad faith.

The use of the Disputed Domain Name to resolve to the website that reproduces the Complainant's VIRGIN ATLANTIC Trademarks without authorisation, and purports to provide international cargo and courier services, is clearly intentionally done to deceive consumers into thinking that the Disputed Domain Name is operated by or connected to the Complainant and the Virgin Atlantic Business. The fact that Internet users will not be able to obtain reliable information regarding the Virgin Atlantic Cargo business by sending enquiries to the false email address or calling the false phone number is likely to divert actual or prospective consumers away from the business of the Complainant that will be hugely disruptive to those consumers, the Complainant, and the Virgin Atlantic Cargo business.

It is furthermore likely that the "contact us" form, email address and telephone number on the website under the Disputed Domain Name are being used for phishing purposes; that is, to obtain personal details of members of the public for fraudulent commercial gain. Also, it is likely that the Respondent was aware of the Complainant and the Virgin Atlantic Cargo business at the time of registering the Disputed Domain Name.

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 to succeed must satisfy the panel that:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which complainant has rights;
- (ii) the respondent has no rights or legitimate interests in respect of the disputed domain name; and
- (iii) the disputed domain name was registered and is being used in bad faith.

6.1. Preliminary Issue: Language of the Proceeding

The Complaint was submitted in English. The Registrar confirmed that the language of the Registration Agreement for the Disputed Domain Name is Ukrainian.

Paragraph 11(a) of the Rules provides that “unless otherwise agreed by the Parties, or specified otherwise in the Registration Agreement, the language of the administrative proceeding shall be the language of the Registration Agreement, subject to the authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceeding”. The Panel may also order that any documents submitted in a language other than that of the proceeding be translated.

The Complainant has filed the Complaint in English and requests that English to be the language of this proceeding or alternatively simultaneously in English and Ukrainian, without requiring a translation of the Complaint, due to the following reasons:

- the website under the Disputed Domain Name is entirely in English;
- the phone number placed on the website under the Disputed Domain Name has a British dialling code and the address is also in the United Kingdom;
- the Respondent has at least a working knowledge of English and possibly a connection to the United Kingdom;
- to require a translation of the Complaint in Ukrainian would cause it a disproportionate burden and be inequitable.

The Complainant and its representative are British companies. Accordingly, neither the Complainant nor its representative are able to understand and to communicate in Ukrainian. Forcing the Complainant to translate the Complaint and annexes thereto, would result in unfair additional expenses for the Complainant and would delay this UDRP proceeding. Moreover, the Respondent did not file any suggestions or objections regarding the language of this proceeding. Further, the Respondent is reportedly located in the United States, where English is the dominant language.

The Disputed Domain Name and generic Top-Level Domain (“gTLD”), both are in Latin characters and not Cyrillic characters. The content of the website under the Disputed domain Name is also in English.

Paragraph 10(c) of the Rules sets out that the Panel shall ensure that the administrative proceeding takes place with due expedition.

Having considered all circumstances of this case, the Panel concludes under paragraph 11(a) of the Rules that English shall be the language of the proceeding.

6.2. Substantive Issues

A. Identical or Confusingly Similar

The Complainant has properly asserted its rights in the VIRGIN ATLANTIC Trademarks due to the long use and registrations worldwide.

The Disputed Domain Name resembles the Complainant's registered VIRGIN ATLANTIC Trademarks in their entirety with addition of the term "courier", a hyphen and the gTLD ".com". According to section 1.7 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), in cases where a domain name incorporates the entirety of a trademark, the domain name will normally be considered identical or confusingly similar to that mark for purposes of UDRP standing. Also, in accordance with the [WIPO Overview 3.0](#), section 1.8, where the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element.

The Panel finds that in view of the fact that the Disputed Domain Name incorporates the entirety of the Complainant's VIRGIN ATLANTIC Trademarks, the addition of the term "courier", and a hyphen does not in any case prevent a finding of confusing similarity between the Disputed Domain Name and the Complainant's Trademarks.

It is also well established that the gTLD, in this case ".com", is usually disregarded for the purpose of determining identity or confusing similarity under the first element.

Furthermore, the use of hyphens in the Disputed Domain Name is irrelevant in a finding of confusing similarity, see e.g. *Royale Indian Rail Tours Limited v. Divino Indian Memoirz Tours Pvt. Ltd.*, WIPO Case No. [D2010-2107](#) ("In the present case, the Panel finds that... adding a hyphen between the two words 'maharaja' and 'express' in the disputed domain name are insignificant modifications that do not reduce the confusing similarity between the disputed domain name and the Complainant's mark").

In light of the above, the Panel finds that the Disputed Domain Name is confusingly similar to the Complainant's VIRGIN ATLANTIC Trademarks, and that the Complainant has established the first condition of paragraph 4(a) of the Policy.

B. Rights or Legitimate Interests

The Panel found that the Complainant has made a *prima facie* case that the Respondent lacks rights or legitimate interests in the Disputed Domain Name. The Respondent registered the Disputed Domain Name more than 30 years after the VIRGIN ATLANTIC Trademarks had been registered. There is no evidence that the Respondent owns any VIRGIN ATLANTIC trademark, nor that it is commonly known by the Disputed Domain Name. The Respondent did not respond to the Complaint, did not participate in this proceeding, and thereby, the Respondent did not present any evidence for supporting any rights or legitimate interests in the Disputed Domain Name and thus the Respondent has failed to come forward with any evidence to rebut such *prima facie* case.

The Complainant has not licensed, authorized or anyhow permitted the Respondent to use its VIRGIN ATLANTIC Trademarks or to register the Disputed Domain Name which is confusingly similar to the VIRGIN ATLANTIC Trademarks.

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 VIRGIN ATLANTIC Trademarks of the Complainant. As of the date of this Decision the Disputed Domain Name resolved to active website offering logistics, cargo, and freight services in direct competition with that of the Complainant. The Panel has checked the content of the website under the Dispute Domain Name and found out that it allegedly offers such services through the company name Virgin Atlantic Courier Service, as well as the email address

"[...]@virginatlantic-courier.com" that incorporates the Disputed Domain Name and the Complainant's registered VIRGIN ATLANTIC Trademarks. Also, the website contains a "contact us" form where the users are expected to provide their personal data. In pursuance of section 2.13.1 of the [WIPO Overview 3.0](#), "Panels have categorically held that the use of a domain name for illegal activity (e.g., the sale of counterfeit goods or illegal pharmaceuticals, phishing, distributing malware, unauthorized account access/hacking, impersonation/passing off, or other types of fraud) can never confer rights or legitimate interests on a respondent." With respect to the circumstances of this case, the Panel considers that it is obvious that the Respondent registered the Disputed Domain Name with good awareness of the Complainant and with the sole intention of commercial gain by creating a likelihood of confusion with the Complainant's VIRGIN ATLANTIC Trademarks as to the source of the email communication sent using the Disputed Domain Name. Apparently, the Panel cannot consider such use of the Disputed Domain Name as *bona fide* offering goods or services, or a legitimate noncommercial or fair use.

In view of the foregoing, the Panel finds that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name and that the Complainant succeeds under the second element of paragraph 4(a) of the Policy.

C. Registered and Used in Bad Faith

The Complainant's VIRGIN ATLANTIC Trademarks were registered long before the registration of the Disputed Domain Name in 2023. The VIRGIN ATLANTIC Trademarks are distinctive and it is apparent that through use over many years they have developed a considerable reputation in the world in connection with the Complainant's services.

The Disputed Domain Name incorporates the Complainant's VIRGIN ATLANTIC Trademarks in whole and resolves to the website that creates a strong likelihood of confusion with the Complainant's VIRGIN ATLANTIC Trademarks as to the source, sponsorship, affiliation, or endorsement of the Disputed Domain Name. Unsuspecting Internet users might have well been under the impression that it is website created and operated by a certified service provider of the Complainant, which is not true. Moreover, such use of the Disputed Domain Name indicates that the Respondent was well aware of the Complainant's business and VIRGIN ATLANTIC Trademarks when it registered the Disputed Domain Name. The Respondent obviously chose to register the Disputed Domain Name, which is confusingly similar to the Complainant's VIRGIN ATLANTIC Trademarks, for the purpose of attracting, for commercial gain, the Internet users to its websites by creating a likelihood of confusion with the Complainant's VIRGIN ATLANTIC Trademarks as to the source, sponsorship, affiliation, or endorsement of the Respondent's websites. The Panel also is of opinion that it is very likely the website under the Disputed Domain Name may be used to obtain personal data of Internet users for illegitimate commercial gain. In the event any Internet users suffer harm or loss as a result of the scam being carried out using the Disputed Domain Name, this will cause further disruption to the Complainant.

In addition, the Panel is of the opinion that it is clear that the Respondent, having registered and used the Disputed Domain Name, which is confusingly similar to the Complainant's famous VIRGIN ATLANTIC Trademarks, intended to disrupt the Complainant's business and confuse Internet users seeking for or expecting the Complainant. In view of the absence of any evidence to the contrary and that the Respondent did not file any response to claim otherwise, the Panel concludes that the Respondent has registered and is using the Disputed Domain Name in bad faith.

Therefore, having examined all the circumstances of the case the Panel finds that the Respondent registered and is using the Disputed Domain Name in bad faith, and accordingly that the paragraph 4(a)(iii) of the Policy has been satisfied by the Complainant.

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, <virginatlantic-courier.com>, be transferred to the Complainant.

/Mariia Koval/

Mariia Koval

Sole Panelist

Date: December 4, 2023