

## **ADMINISTRATIVE PANEL DECISION**

Virgin Enterprises Limited v. Ivan Ivanov  
Case No. D2022-1232

### **1. The Parties**

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

The Respondent is Ivan Ivanov, the Russian Federation.

### **2. The Domain Name and Registrar**

The disputed domain name <virginkoin-invest.com> (the “Disputed Domain Name”) is registered with Registrar of Domain Names REG.RU LLC (the “Registrar”).

### **3. Procedural History**

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on April 7, 2022. On April 7, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 8, 2022, 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 April 21, 2022, the Center transmitted an email communication to the Parties in English and Russian regarding the language of the proceeding. On April 21, 2022, the Complainant submitted its request that English be the language of the proceeding. The Respondent did not comment on 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 Russian and English, and the proceedings commenced on April 27, 2022. In accordance with the Rules, paragraph 5, the due date for Response was May 17, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on May 19, 2022.

The Center appointed Pham Nghiem Xuan Bac as the sole panelist in this matter on June 3, 2022. 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, Virgin Enterprises Limited, is a member of the Virgin Group that is a United Kingdom-based multinational founded by Sir Richard Branson. Virgin Group operates in multiple fields covering financial services, health and wellness, music and entertainment, people and planet, telecommunications and media, travel and 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.

Virgin Money is part of the Virgin Group of companies and specialize in providing financial services. According to the Complainant, Virgin Money brand has been widely publicised via its sponsorship of high-profile events, which receive widespread media coverage. Further, Virgin Money has consistently been recognized by third parties for its exceptional services.

The Complainant is the owner of numerous trademark registrations for the trademarks VIRGIN for finance-related products and services in Classes 09 and 36, among others, in various jurisdictions throughout the world, including, but not limited to United Kingdom Trademark Registration No. 1585773, No. 2601995 registered on October 20, 1995 and February 24, 2012 respectively, European Union Trademark Registration No. 003252921 registered on November 15, 2004 and International Trademark Registration No. 1141309 registered on May 21, 2012 designating the Russian Federation, where the Respondent resides.

The Disputed Domain Name <virginkoin-invest.com> was registered on February 8, 2022. As evidenced by the Complainant, the Disputed Domain Name used to resolve to a webpage that hosts an article discussing a digital currency “vcoin” purportedly created by Virgin Group and using image of its CEO - Sir Richard Branson. Further, such website used to claim to allow Internet users to be the first to buy the digital currency “vcoin” at its cheapest price by filling a form with Internet users’ contact details.

#### **5. Parties’ Contentions**

##### **A. Complainant**

The Complainant contends that each of the three elements specified in paragraph 4(a) of the Policy are satisfied in the present case, as follows:

(i) The Disputed Domain Name is identical or confusingly similar to the trademark or service mark in which the Complainant has rights.

First, the Complainant contends that its VIRGIN trademarks are subject of various registrations in jurisdictions worldwide and have all been consistently and intensively used across all VIRGIN operations since the company was founded.

Second, the Complainant asserts that the Disputed Domain Name is confusingly similar to its trademarks VIRGIN since the Disputed Domain Name incorporates the trademarks VIRGIN in its entirety. The addition of the term “koin”, which is an obvious misspelling of the word “coin” and also part of the term “Bitcoin” referring to cryptocurrency, as well as the term “invest” to the Disputed Domain Name is insufficient to avoid confusing similarity as both terms are clearly descriptive in the context of finance and financial services, where the Complainant’s trademarks have reputation.

Finally, the Complainant contends that the addition of descriptive or generic indications to a third party trade mark does not avoid the Disputed Domain Name being confusingly similar to the third party's trade mark.

(ii) The Respondent has no rights or legitimate interests in respect of the Disputed Domain Name.

First, the Complainant submits that the Disputed Domain Name resolves to a webpage that hosts an article discussing a digital currency purportedly created by the Virgin Group and Sir Richard Branson. The Complainant argues that the fake article is not connected to or authorized by the Complainant, Sir Richard Branson or the Virgin Money business, and the information in such article is false. Further, there is no evidence that the Respondent has ever been known by the Disputed Domain Name or as "vcoin", or used the Disputed Domain Name or "vcoin" in connection with a *bona fide* business.

Second, the Complainant argues that the reproduction of the images of Sir Richard Branson and Warren Buffett on the website under the Disputed Domain Name without authorization of the copyright owners is a copyright infringement. Furthermore, the website under the Disputed Domain Name even provides a purported quote from Warren Buffett for endorsing "vcoin".

Third, the Complainant contends that the Respondent's use of the VIRGIN trademarks as part of the Disputed Domain Name is for the purpose of confusing Internet users into believing that the Disputed Domain Name, the website thereunder and the details regarding "Vcoin" are originated from, are connected to or endorsed by the Complainant, Sir Richard Branson or the Virgin Money business. Such confusion could divert actual or prospective customers of the Virgin Money business away.

Furthermore, the Complainant argues that based on its experience, the website under the Disputed Domain Name is designed to obtain sensitive personal contact details of Internet users for the purposes of fraudulent commercial gain. Therefore, in the event of any loss caused by the use of the Disputed Domain Name and the website thereunder, the significant reputation of the Complainant's trademarks is liable to tarnishment.

Finally, the Complainant submits that the use of the Disputed Domain Name and the website thereunder does not represent a noncommercial fair use of the Disputed Domain Name, without intent for commercial gain to misleadingly divert consumers or to tarnish the reputation in the Complainant's trademarks.

(iii) The Disputed Domain Name was registered and is being used in bad faith.

First, the Complainant contends that the use of the Disputed Domain Name is not a good faith use. Instead, this use is clearly for the purpose of fraudulent commercial gain by phishing Internet users' personal details using the online form embedded in the website thereunder. This is also clearly a bad faith and illegitimate use of the Disputed Domain Name.

Second, the Complainant submits that the use of marks identical and highly similar to its VIRGIN trademarks as part of the Disputed Domain Name is intentionally to confuse Internet users into believing that the Disputed Domain Name, the website thereunder and the alleged new digital currency are operated by the Complainant, the Virgin Money business, Sir Richard Branson or the Virgin Group, in order to perpetuate the phishing activity.

In addition, this confusion will be disruptive the business of the Complainant and Virgin Money, as it is liable to divert actual or prospective consumers away from those genuine businesses, or lead to loss or harm through personal details being taken for phishing purposes.

Finally, the Complainant argues that the Respondent has intentionally attempted to attract for commercial gain, Internet users to the Disputed Domain Name and the website thereunder, by creating a likelihood of confusion with the Complainant's trademarks as to the source, sponsorship, affiliation, or endorsement of the Disputed Domain Name or the website thereunder.

## **B. Respondent**

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

## **6. Discussion and Findings**

### **A. Procedural Issues**

#### **(I) Language of the Proceeding**

The Complaint was filed in English. However, the Registrar confirmed that the language of the Registration Agreement is Russian.

As the Complaint was filed in English, the Center, in its notification dated April 21, 2022, invited the Complainant to submit either (i) satisfactory evidence of an agreement between the Complainant and the Respondent to the effect that the proceeding should be in English, or (ii) the Complaint translated into Russian or (iii) a substantiated request for English to be the language of the proceeding by April 24, 2022.

On April 21, 2022, the Complainant submitted a request that English be the language of the proceeding.

According to paragraph 11(a) of the Rules, unless otherwise agreed by the Parties, or specified otherwise in the Registration Agreement, the language of the 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.

Similar to previous UDRP decisions, the Panel finds that the spirit of paragraph 11(a) is to ensure fairness in the selection of language by giving full consideration to the Parties' level of comfortability with each language, the expenses to be incurred, and the possibility of delay in the proceeding in the event translations are required and other relevant factors (see, e.g., *Deutsche Messe AG v. Kim Hyungho*, WIPO Case No. [D2003-0679](#)).

In the present case, the Panel takes into account the circumstances of the proceeding, including, but not limited to:

(i) the fact that the Complainant, a United Kingdom-based entity, does not appear to be able to communicate in Russian and therefore, if the Complainant was required to have the documents translated into Russian, the proceeding would be unduly delayed, and the Complainant would have to incur substantial expenses for translation;

(ii) the Disputed Domain Name and its associated website, as shown on the Annex 12 of the Complaint, contain English contents; these suggest that the Respondent has knowledge of the English language and would be able to communicate in English;

(iii) the Respondent did not object for English to be the language of the proceeding, and did not submit a Response in either English or Russian.

Therefore, for the purpose of easy comprehension of the Complainant (ultimately, the Party solely taking part in the proceeding) of the Panel's decision without any necessity of translations, and in the interest of fairness to both Parties as well as the Panel's obligation under paragraph 10(c) of the Rules, which provides that "the Panel shall ensure that the administrative proceeding takes place with due expedition", the Panel hereby decides, under paragraph 11(a) of the Rules, that the language of the proceeding shall be English and shall render its decision in English.

## **(II) The Respondent's Failure to Respond**

The Respondent's failure to file a Response does not automatically result in a decision in favor of the Complainant (see, e.g., *Tradewind Media, LLC d/b/a Intopic Media v. Jayson Hahn*, WIPO Case No. [D2010-1413](#), and *M. Coentim Benoit Thiercelin v. CyberDeal, Inc.*, WIPO Case No. [D2010-0941](#)). However, the Panel may draw appropriate inferences from the Respondent's default.

### **B. Identical or Confusingly Similar**

The Complainant is required to establish the two following elements: (1) that it has trademark rights, and, if so, (2) that the Disputed Domain Name is identical or confusingly similar to its trademark.

First, the Panel finds that the Complainant has clearly evidenced that it has registered trademark rights to VIRGIN, well before the Disputed Domain Name was registered.

Second, the Disputed Domain Name comprises the VIRGIN trademarks, in which the Complainant has exclusive rights. The difference between the Disputed Domain Name and the trademark is the addition of the term "koin", which is a common misspelling of the word "coin", the dictionary term "invest" and the hyphen between these terms.

The Panel finds that the trademarks VIRGIN remain recognizable within the Disputed Domain Name. In this regard, 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, see section 1.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition. Thus, in the Panel's view, the addition of the said terms does nothing to dispel confusing similarity. It also was found in previous UDRP decisions (see, e.g. see, e.g., *Price Costco International, Inc. v. Huynh Van Duc*, WIPO Case No. [D2020-0321](#); *Philip Morris Products S.A. v. Ong Nguyen Ngoc Ha*, WIPO Case No. [D2019-2509](#); and *Facebook, Inc. v. Domain Admin Privacy Protect, LLC (PrivacyProtect.org) / Do Viet Dung*, WIPO Case No. [D2019-1121](#)).

Third, the Panel finds, similarly to other UDRP panels, that the addition of the gTLD ".com" to the Disputed Domain Name does not constitute an element that may help avoid confusing similarity for the Policy purposes (see, e.g., *Volkswagen AG v. Privacy Protection Services*, WIPO Case No. [D2012-2066](#); *The Coca-Cola Company v. David Jurkiewicz*, WIPO Case No. [DME2010-0008](#); *Telecom Personal, S.A., v. NAMEZERO.COM, Inc.*, WIPO Case No. [D2001-0015](#); *F. Hoffmann La Roche AG v. Macalve e-dominios S.A.*, WIPO Case No. [D2006-0451](#); *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#)).

On the basis of the foregoing findings, and according to paragraph 4(a)(i) of the Policy, the Panel finds that the Disputed Domain Name is confusingly similar to the Complainant's VIRGIN trademarks, and the first element of paragraph 4(a) of the Policy is established.

### **C. Rights or Legitimate Interests**

Paragraph 4(c) of the Policy lists circumstances, in particular but without limitation, which, if found by the Panel to be proved, demonstrate the respondent's rights or legitimate interests in the disputed domain name for the purposes of paragraph 4(a)(ii) of the Policy, including:

"(i) before any notice to you of the dispute, your use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a *bona fide* offering of goods or services; or

(ii) you (as an individual, business, or other organization) have been commonly known by the domain name, even if you have acquired no trademark or service mark rights; or

(iii) you are making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.”

The Panel finds that the Complainant has made a *prima facie* evidence on that the Respondent has no rights or legitimate interests in the Disputed Domain Name. The Respondent did not refute the Complainant’s contentions.

The consensus of previous UDRP decisions is that while the overall burden of proof in UDRP proceedings is on the complainant, once a *prima facie* case is made, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating its rights or legitimate interests in the disputed domain name (see, e.g., *Document Technologies, Inc. v. International Electronic Communications Inc.*, WIPO Case No. [D2000-0270](#); *Julian Barnes v. Old Barn Studios Limited*, WIPO Case No. [D2001-0121](#)). In this instant case, the Panel finds that the Respondent has failed to meet that burden since no Response was submitted providing arguments or evidence to the contrary.

Regarding paragraph 4(c)(i) of the Policy, the Panel finds, in light of the Complainant’s asserted facts, that no license, permission or authorization in any kind to use the Complainant’s trademarks VIRGIN has been granted to the Respondent. There is no evidence available that the Respondent holds any registered or unregistered trademark rights in any jurisdiction related to “virgin” or “virginkoin-invest”. Thus, the Panel finds that the Respondent has no rights in the trademarks VIRGIN.

In addition, as of the date of this Decision, the Panel finds that the Disputed Domain Name resolves to an inactive website. However, it is proven and evidenced by the Complainant at Annex 12 of the Complaint that the Disputed Domain Name used to resolve to a webpage that hosts a false article discussing a digital currency “vcoin” purportedly created by Virgin Group and/or its CEO, Sir Richard Branson, and using his image. Further, such website used to claim to allow Internet users to be the first to buy the digital currency “vcoin” at its cheapest price by filling a form with Internet users’ name, email and phone number. On such website, the Panel also finds that the Respondent did not place any statement or disclaimer accurately and prominently disclosing its relationship with the Complainant or the Virgin Group.

In the Panel’s view, the Respondent’s use of the Disputed Domain Name in this manner may mislead consumers into believing in a connection or association between the Respondent, the Disputed Domain Name and the Complainant, where such connection or association does not exist in reality. Further, the website under the Disputed Domain Name also may provide the false information to public and obtain personal contact details of Internet users for other purposes. As such, the Panel finds the Respondent’s use of the Disputed Domain Name, cannot be considered a *bona fide* offering of goods or services under paragraph 4(c)(i) of the Policy.

Regarding paragraphs 4(c)(ii) and 4(c)(iii) of the Policy, the Panel finds that there is no evidence that would suggest that the Respondent, as an individual, business, or other organization, has been commonly known by the Disputed Domain Name or that the Respondent is making a legitimate noncommercial or fair use of the Disputed Domain Name. In fact, as it appears following the Complainant’s assertions and evidence with regard to the Respondent’s registration of the Disputed Domain Name, the Respondent had full knowledge of the Complainant and the VIRGIN trademarks and had an intention to gain profit by riding on the goodwill and reputation of the Complainant.

Accordingly, the Panel finds that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name, and the second element, paragraph 4(a)(ii) of the Policy is established.

#### **D. Registered and Used in Bad Faith**

Paragraph 4(b) of the Policy identifies, in particular but without limitation, four circumstances which, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith, including:

“(i) circumstances indicating that you have registered or you have acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of your documented out-of-pocket costs directly related to the domain name; or

(ii) you have registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that you have engaged in a pattern of such conduct; or

(iii) you have registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your website or other online location, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of your website or location or of a product or service on your website or location.”

The above four circumstances are not exhaustive and bad faith may be found by the Panel alternatively.

The Panel finds that the Complainant has put forth evidence that the Respondent has registered and used the Disputed Domain Name in bad faith. The Respondent did not reply to the Complainant's contentions and, therefore, did not refute the Complainant's contentions.

First, the Panel opines that registration and use of the Disputed Domain Name, while having no legitimate rights and interests in it, as analyzed in Section 6.C., are an indication of bad faith in registration and use thereof.

The Panel has considered the Complainant's assertions and evidence with regard to the Respondent's bad faith registration and use of the Disputed Domain Name. In this regard, the Panel finds that the Complainant's VIRGIN trademarks have been registered in a variety of jurisdictions around the world. In addition, the Complainant's VIRGIN trademarks have been put in use for a number of years and has gained certain reputation in many sectors, including financial services. The Complainant's registration of the VIRGIN trademarks well predates the registration of the Disputed Domain Name.

The Disputed Domain Name comprises the Complainant's VIRGIN trademarks in its entirety. Given the extensive use of the VIRGIN trademarks by the Complainant, which occurs in numerous countries, it is very unlikely that the Respondent registered the Disputed Domain Name in a fortuity. Also, in consideration of the use of the Disputed Domain Name and the contents of the website thereunder, the Panel is of the view that the Respondent obviously knew of the Complainant and the VIRGIN trademarks when it registered the Disputed Domain Name. The Panel considers the registration of the Disputed Domain Name is an attempt by the Respondent as to take unfair advantage of the Complainant's goodwill and the reputation of the Complainant's VIRGIN trademarks.

On the date of this Decision, the Panel accesses the Disputed Domain Name and finds that it resolves to an inactive website. However, it is well proven and evidenced by the Complainant that the website under the Disputed Domain Name used to resolve to a webpage that hosts a false article discussing a digital currency “vcoin” purportedly created by Virgin Group and/or its CEO “Sir Richard Branson” and using the image of the CEO. On such website, the Panel also finds that the Respondent did not place any statement or disclaimer accurately and prominently disclosing its relationship with the Complainant or the Virgin Group.

The Panel takes the view that any Internet users seeking to use the Complainant's financial products and services would likely mistakenly believe that the Respondent is either connected to or associated with the Complainant, while no such connection exists in fact. The Panel therefore finds that by using the Disputed Domain Name, 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 trademarks as to the source,

sponsorship, affiliation, or endorsement of its website on its website, which is indicative of bad faith within the meaning of paragraph 4(b)(iv) of the Policy.

In addition, the Panel views that by using the Disputed Domain Name, the Respondent may provide the false information regarding the digital currency purportedly created by the Complainant and/or Virgin Group and/or Sir Richard Branson to obtain personal contact details of Internet users for malicious purposes. This is another indication of bad faith on the part of Respondent.

Taking into account all of the above and the available record, the Panel finds that the Disputed Domain Name was registered and is being used by the Respondent in bad faith and the third element under paragraph 4(a)(iii) of the Policy is established.

## **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 <virginkoin-invest.com> be transferred to the Complainant.

*/Pham Nghiem Xuan Bac/*

**Pham Nghiem Xuan Bac**

Sole Panelist

Date: June 17, 2022