

ADMINISTRATIVE PANEL DECISION

Virgin Enterprises Limited v. Domains By Proxy, LLC / Валерий Швальц,
Virgin Invest Galactic and Domain ID Shield Service, Domain ID Shield
Service CO., Limited / Dmitrij A Tambovcev
Case No. D2022-2060

1. The Parties

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

Respondents are Domains By Proxy, LLC, United States of America (“United States”) / Валерий Швальц, Virgin Invest Galactic, Ukraine and Domain ID Shield Service, Domain ID Shield Service CO., Limited, United States / Dmitrij A Tambovcev, China.

2. The Domain Names and Registrar

The disputed domain name <virgingalacticinvest.com> (the “first disputed domain name”) is registered with OnlineNic, Inc. d/b/a China-Channel.com; and the disputed domain name <virgin-investgalactic.com> (the “second disputed domain name”) is registered with GoDaddy.com, LLC. (Collectively the “Registrars”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 7, 2022, for the disputed domain name <virgin-investgalactic.com>. The filing of the Complaint was accompanied with a request to consolidate this Complaint with WIPO Case No. [D2022-1598](#) regarding the disputed domain name <virgingalacticinvest.com>. The Center sent an email communication to Complainant on June 10, 2022, inviting Complainant to submit an amended Complaint for both disputed domain names, including the grounds for consolidation. Complainant filed a consolidated Complaint on June 15, 2022.

On June 8 and 17, 2022, the Center transmitted by email to the Registrars a request for registrar verification in connection with the disputed domain names. On June 8 and 17, the Registrars transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain names which differed from the named Respondent and contact information in the Complaint. The Center sent an email communication to Complainant on June 29, 2022, providing the registrant and contact information disclosed by the Registrars, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amended Complaint on July 4, 2022.

The Center verified that the Complaint together with the consolidated Complaint and 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 Respondent of the Complaint, and the proceedings commenced on July 12, 2022. In accordance with the Rules, paragraph 5, the due date for Response was August 1, 2022. Respondent did not submit any response. Accordingly, the Center notified the Commencement of Panel Appointment on August 8, 2022.

The Center appointed Ingrīda Kariņa-Bērziņa as the sole panelist in this matter on August 17, 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. Further Procedural Considerations

The mailing address provided by the registrant of one of the disputed domain names, <virgin-investgalactic.com>, is stated to be in Odessa, Ukraine, which is subject to an international conflict at the date of this Decision. As these circumstances may impact case notification, the Panel shall, in accordance with its discretion under paragraph 10 of the Rules, consider whether the proceeding should continue.

Having considered all the circumstances of the case, the Panel is of the view that the proceedings should continue. The Panel notes that the contact information Odessa, Ukraine provided in respect of <virgin-investgalactic.com> is likely incomplete and/or false. The courier was able to deliver written notice to the destination country, where it was "registered for collection". When Respondent failed to collect the package, it was destroyed. There is no evidence that suggests that the Notification of Complaint sent by email to Respondents at email addresses as registered with the Registrar were not successfully delivered. The Center's fax messages failed to transmit to Respondent. The Panel notes that the Center successfully sent written notice of the Complaint to both named privacy services.

The Panel also notes that the website hosted at the disputed domain name <virgin-investgalactic.com> is primarily in the English language and used to be practically identical to the website at the disputed domain name <virgingalacticinvest.com>, which was registered using an address in China a few months earlier. The disputed domain name <virgin-investgalactic.com> was registered shortly after the commencement of proceedings against <virgingalacticinvest.com>. These circumstances further support an inference that the Notification of Complaint has reached Respondent.

The Panel notes that Complainant has specified in the Complaint that any challenge made by Respondent to any decision to transfer or cancel the disputed domain name shall be referred to the jurisdiction of the Courts of the location of the principal office of the concerned registrar. In this case, the principal office of the Registrar of the disputed domain name <virgin-investgalactic.com>, GoDaddy, Inc., is in Arizona, United States.

The Panel concludes that the Party allegedly located in Ukraine has been given a fair opportunity to present its case, and so that the administrative proceeding takes place with due expedition, the Panel will proceed to a Decision accordingly.

5. Factual Background

Complainant is a part of the Virgin Group, a diverse range of over 40 businesses including space travel. It is the proprietor of numerous trademark registrations for its VIRGIN and VIRGIN GALACTIC marks, including the following:

- UK Trade Mark Registration No. UK00001287268 for VIRGIN (word mark), registered on April 5, 1991, for services in classes 35, 40, 41, 42, and 43,
- European Union Trade Mark No. 004756921 for VIRGIN GALACTIC (word mark), registered on January 18, 2007, for goods and services in classes 12, 16, 25, 28, and 39;
- International Trademark No. 1489392 for VIRGIN GALACTIC (word mark), registered on July 10, 2019, for services in classes 37, 40, and 42.

The disputed domain name <virgingalacticinvest.com> was registered on March 24, 2022. The disputed domain name <virgin-investgalactic.com> was registered on May 8, 2022. Both used to resolve to English-language websites that offer investment services under the VIRGIN GALACTIC mark. The websites prominently featured the VIRGIN logo and make reference to that company's newsworthy events. At the time of the decision, the disputed domain names resolve to different parking pages.

6. Parties' Contentions

A. Complainant

Complainant's contentions may be summarized as follows:

Request to consolidate proceedings

Complainant requests consolidation of the proceedings for the following reasons: the website at the disputed domain name <virgin-investgalactic.com> is almost identical in content and presentation to the website at the disputed domain name <virgingalacticinvest.com>. The disputed domain names share the same three words. The Terms and Conditions and privacy policy published at <virgin-investgalactic.com> reference the disputed domain name <virgingalacticinvest.com>. The second disputed domain name, <virgin-investgalactic.com>, was registered three days after the Center provided the Notice of Registrant Information identifying the Registrant Contact in relation to the first disputed domain name, <virgingalacticinvest.com>. The website at <virgin-investgalactic.com> provides contact information referencing <virgingalacticinvest.com>. The contact information for <virgingalacticinvest.com> includes a mailing address in Hong Kong, China and references a region of Ukraine. The persons named as registrants are not affiliated with Virgin Galactic, the business being promoted on the websites. The contact information for both disputed domain names should therefore be considered as false and the differing contacts for the disputed domain names should be disregarded.

Complainant considers that the registration of the second disputed domain name was effected in reaction to the UDRP proceedings filed against the first disputed domain name. The websites to which the two disputed domain names resolve are nearly identical to each other. Complainant believes that both disputed domain names are under the control of a single Respondent.

Substantive contentions

Under the first element, Complainant states that the Virgin Group serves 50 million customers in the financial services, health and wellness, music and entertainment, people and planet, telecommunications and media, travel and leisure, and space sectors. The VIRGIN brand has been heavily promoted since its inception. Complainant has registered over 5,500 domains consisting of or incorporating its VIRGIN mark and owns

3,500 trademark applications or registrations for this mark. The Virgin Galactic business was established in 2004 and culminated in commercial passenger space travel commencing in 2021, which has been publicized worldwide. The disputed domain names incorporate Complainant's VIRGIN and VIRGIN GALACTIC marks in their entirety. The insertion of the term "invest", with a hyphen in one case and without in the other, does not detract from the confusing similarity.

Under the second element, Complainant states that the disputed domain names resolve to websites that purport to offer investment products and plans under the mark VIRGIN GALACTIC. The websites imitate the look and feel of Complainant's official website at <virgin.com>. The websites contain a "Profit Calculator", that promotes purported schemes to increase income by referring others to the investment program titled "Referral Program Virgin Galactic" and different levels of investment plans. The websites contain marks identical to Complainant's Registered VIRGIN and VIRGIN GALACTIC marks and logos, and use images from Complainant's website. The website terms and conditions are copied from Complainant's website. Both websites contain references to news events concerning Complainant. Links on these websites resolve to Complainant's social media sites. The websites are nearly identical to each other. Complainant states that Respondents are not in any way affiliated or authorized by Complainant. Respondents are perpetuating a fraudulent scheme to obtain the personal data of Internet users.

Under the third element, Complainant states that its VIRGIN and VIRGIN GALACTIC marks are extremely well-known. Respondent is clearly aware of Complainant, as demonstrated by the use of Complainant's marks and logos. The disputed domain names are being used to redirect to websites that purport to promote and provide options to sign up to an investment program that Complainant strongly suspects is fake and in fact a scam designed to obtain sensitive personal details for fraudulent commercial gain. Moreover, the second disputed domain name, <virgin-investgalactic.com>, was registered in response to Complainant's UDRP complaint against the first disputed domain name, <virgingalacticinvest.com>. Respondent registered and is using the disputed domain names in bad faith.

Complainant requests transfer of the disputed domain names.

B. Respondents

Respondents did not reply to Complainant's contentions.

7. Discussion and Findings

7.1 Preliminary Issue - Consolidation of Proceedings

Pursuant to paragraph 10 of the Rules:

(a) the Panel shall conduct the administrative proceeding in such manner as it considers appropriate in accordance with the Policy and these Rules.

(b) In all cases, the Panel shall ensure that the Parties are treated with equality and that each Party is given a fair opportunity to present its case.

[...]

(e) A Panel shall decide a request by a Party to consolidate multiple domain name disputes in accordance with the Policy and these Rules.

Consolidation of Multiple Respondents

The principles to assess a request to consolidate multiple respondents are set forth in the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 4.11.2.

Noting the circumstances of the case, the Panel considers the disputed domain names to be under common control. While different registrars were used and different contact details were provided, the Panel notes that the disputed domain names reflect identical naming patterns, consisting of Complainant's VIRGIN GALACTIC mark and the term "invest". The disputed domain names were registered in a brief time period, with the second disputed domain name registered following the commencement of proceedings against the first disputed domain name. The content of the websites to which the disputed domain names used to resolve is essentially identical.

Respondents do not challenge Complainant's assertions nor offer any alternative explanation for these circumstances. Accordingly, the Panel accepts Complainant's request to consolidate the present proceedings pursuant to the Rules, paragraph 10(e). Respondents are hereinafter referred to as "Respondent".

7.2 Substantive Issues

Paragraph 4(a) of the UDRP requires Complainant to make out all three of the following:

- (i) the disputed domain names are identical or confusingly similar to a trademark or service mark in which Complainant has rights; and
- (ii) Respondent has no rights or legitimate interests in respect of the disputed domain names; and
- (iii) Respondent has registered and is using the disputed domain names in bad faith.

Under paragraph 15(a) of the Rules, "[a] Panel shall decide a complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable".

A. Identical or Confusingly Similar

Complainant has provided evidence establishing that it has trademark rights in the VIRGIN and VIRGIN GALACTIC marks through registrations in the United Kingdom, European Union, and international registrations. Complainant thereby satisfies the threshold requirement of having trademark rights for purposes of standing to file a UDRP case. See [WIPO Overview 3.0](#), section 1.2.1.

In comparing Complainant's marks with the disputed domain names, the Panel finds that the disputed domain names are confusingly similar to Complainant's marks. Each disputed domain name begins with Complainant's VIRGIN mark. The first disputed domain name contains Complainant's VIRGIN GALACTIC mark followed by the term "invest". The second disputed domain name also contains Complainant's VIRGIN GALACTIC mark, however, VIRGIN and "galactic" are separated by the term "invest" and a hyphen. It is the consensus view of UDRP panels that, where a domain name incorporates the entirety of a trademark, the domain name will normally be considered confusingly similar to that mark. Moreover, where the relevant trademark is recognizable within the disputed domain names, 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 [WIPO Overview 3.0](#), sections 1.7 and 1.8.

It is the well-established view of UDRP panels that the generic Top-Level Domain ".com" is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test (see [WIPO Overview 3.0](#), section 1.11.1, and cases cited thereunder).

Accordingly, the Panel finds that Complainant has established the first element under paragraph 4(a) of the Policy.

B. Rights or Legitimate Interests

The Panel finds that the evidence submitted by Complainant establishes a *prima facie* case that Respondent has no rights or legitimate interests in the disputed domain names. Respondent is not authorized by Complainant and has no rights in the VIRGIN or VIRGIN GALACTIC marks. The disputed domain names comprise Complainant's VIRGIN and VIRGIN GALACTIC marks together with a dictionary term. Such use cannot confer rights or legitimate interests.

Pursuant to [WIPO Overview 3.0](#), section 2.1, and cases thereunder, where Complainant makes out a *prima facie* case that Respondent lacks rights or legitimate interests, the burden of production on this element shifts to Respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the disputed domain name.

Respondent has not provided any rebuttal of Complainant's *prima facie* case and has therefore not proved rights or legitimate interests in the disputed domain names. There is no evidence that Respondent is commonly known by the disputed domain names, or that there are any circumstances or activities that would establish Respondent's rights therein. The disputed domain names consist of Complainant's VIRGIN GALACTIC mark plus the term "invest". Even where a domain name consists of a trademark plus an additional term, UDRP panels have largely held that such composition cannot constitute fair use if it effectively impersonates or suggests sponsorship or endorsement by the trademark owner. In this case, noting the nature of the disputed domain names, and the well-known character of Complainant's marks, the Panel finds that the disputed domain names carry a high risk of implied affiliation. See [WIPO Overview 3.0](#), section 2.5.1.

The disputed domain names used to resolve to websites featuring Complainant's marks in connection with purported investment services. The websites displayed Complainant's marks, logos, and images and are clearly part of a fraudulent scheme intended to mislead Internet users into believing that the purported investment services are offered by Complainant. Such unlawful activity using Complainant's mark cannot confer rights or legitimate interests. See [WIPO Overview 3.0](#), section 2.13.

Accordingly, the Panel finds that Complainant has established the second element under paragraph 4(a) of the Policy.

C. Registered and Used in Bad Faith

The Panel finds that Complainant has demonstrated Respondent's bad faith registration and use of the disputed domain names. Complainant's rights in its VIRGIN and VIRGIN GALACTIC marks significantly predate the registration of the disputed domain names. The disputed domain names reflect Complainant's VIRGIN and VIRGIN GALACTIC marks in their entirety, together with the dictionary term "invest". UDRP panels have consistently found that the mere registration of a domain name that is identical or confusingly similar to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith on the part of Respondent. See [WIPO Overview 3.0](#), section 3.1.4.

In this case, the record shows that Respondent deliberately targeted Complainant in incorporating Complainant's marks in the disputed domain names. The disputed domain names resolve to websites purporting to offer "Virgin Galactic" investment services and inviting Internet users to provide their personal data. By using Complainant's marks and images and linking to Complainant's social-media sites and news reports, Respondent has attempted to pass itself off as Complainant to perpetuate what appears to be a fraudulent scheme. The Panel finds that Respondent thereby attempted to impersonate Complainant for commercial gain, indicating bad faith in registration and use of the disputed domain names. See [WIPO Overview 3.0](#), sections 3.1.4 and 3.2.1.

Respondent has provided no evidence of actual or contemplated good-faith use of the disputed domain names and the Panel does not find any such use plausible.

The Panel therefore finds that Complainant has established the third element under paragraph 4(a) of the Policy.

8. 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 names, <virgingalacticinvest.com> and <virgin-investgalactic.com>, be transferred to Complainant.

/Ingrīda Kariņa-Bērziņa/

Ingrīda Kariņa-Bērziņa

Sole Panelist

Date: August 31, 2022