

ADMINISTRATIVE PANEL DECISION

Virgin Enterprises Limited v. Privacy service provided by Withheld for Privacy ehf / James Boisson

Case No. D2022-2452

1. The Parties

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

Respondent is Privacy service provided by Withheld for Privacy ehf, Iceland / James Boisson, Ghana.

2. The Domain Name and Registrar

The disputed domain name <virginbmoney.com> is registered with NameCheap, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on July 6, 2022. On July 6, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On July 6, 2022, 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 and contact information in the Complaint. The Center sent an email communication to Complainant on July 7, 2022, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amended Complaint on July 7, 2022.

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 Respondent of the Complaint, and the proceedings commenced on July 11, 2022. In accordance with the Rules, paragraph 5, the due date for Response was July 31, 2022. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on August 5, 2022.

The Center appointed Bradley A. Slutsky as the sole panelist in this matter on August 10, 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

Complainant is part of the Virgin Group, founded by Sir Richard Branson, and is the owner of various VIRGIN trademarks. According to the Complaint, “[t]here 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. [...] The Complainant owns a substantial portfolio of approximately 3,500 trade mark applications and registrations in over 150 countries covering the majority of the 45 Nice classes of goods and services.” These marks include UK mark for VIRGIN no. UK00001585773, registered on October 20, 1995, International trademark for VIRGIN no. 1141309, registered on May 21, 2012, and a UK mark for VIRGIN MONEY no. UK00002177329, registered on May 21, 1999. The disputed domain name was registered on June 6, 2022. The disputed domain name resolves to a website that purports to offer financial services and that, in some respects, resembles the website for Santander bank.

5. Parties’ Contentions

A. Complainant

Complainant asserts that, in addition to its trademark rights, 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.” Complainant also asserts that its social media pages are viewed over 37 million times each year. Complainant asserts that its Virgin Money business provides a variety of financial services, has a website at <virginmoney.com>, and is the sixth largest bank in the UK, serving around 6.4 million customers. Complainant asserts that the disputed domain name contains Complainant’s VIRGIN mark, and consists of Complainant’s VIRGIN MONEY mark with the letter “b” inserted in the middle. Complainant asserts that “...‘b money’ is likely to be understood by consumers in the field of finance and money as referring to business related banking and money, or specifically in the field of cryptocurrency as referring to one of the earliest forms of digital currency [...]. Therefore, the element ‘b’ has a descriptive generic meaning in the fields of finance and banking, being fields in which the Complainant’s Registered Marks [...] have a reputation. Alternatively, the element ‘b’ could easily be overlooked or mistyped by internet users, given that it constitutes a single letter within the disputed domain name that incorporates 12 letters overall, the other 11 letters corresponding identically to the Complainant’s Registered Mark VIRGIN MONEY.”

Thus, Complainant asserts that the disputed domain name is confusingly similar to Complainant’s marks.

Complainant also asserts that the disputed domain name copies elements of the Santander bank website without permission, thereby allegedly infringing Santander copyrights. Complainant asserts that a variety of links on the website do not lead to valid web pages, and that a number of buttons on the website do not work. Complainant asserts that the website is not operated by or connected with Complainant, its VIRGIN MONEY business, or its founder, and that there is no evidence Respondent is using the disputed domain name in connection with a legitimate business, or has been commonly known by the disputed domain name, or that Respondent has made a *bona fide* offering of goods or services. Rather, Complainant asserts that the disputed domain name “is clearly intended to suggest a link to Virgin Business Money, will confuse internet users, including actual or prospective customers of the Virgin Money business, into thinking that the disputed domain name is connected to or operated by the Complainant or Virgin Money business, and/or that there is some form of commercial relationship between the Virgin Money and Santander businesses, when that is not the case. This confusion will divert actual or prospective customers away from the Virgin Money business.” Complainant further asserts that the login page at the disputed domain name likely is being used to phish user credentials. Complainant also notes that Respondent engaged in similar activities with respect to the “virginbusinessmoney” domain name, as evidenced by the decision in *Virgin Enterprises Limited v. James Boisson*, WIPO Case No. [D2022-0896](#). In light of the foregoing, Complainant asserts that

Respondent has no rights or legitimate interests in respect of the disputed domain name. Complainant further asserts that the use of its marks on a financial services website is intended to confuse Internet users into thinking that Respondent's website and login page are operated by or connected with Complainant, and that the broken links and buttons and the content copied from Santander bank indicate that Respondent is not conducting a legitimate business and instead is phishing for user login credentials. Complainant also asserts that Respondent's activities as outlined in WIPO Case No. [D2022-0896](#) demonstrate a pattern of bad faith registration and use by Respondent. Complainant asserts that Respondent was aware of Complainant and its VIRGIN MONEY business at the time Complainant registered the disputed domain name, and that "Respondent has intentionally attempted to attract, for commercial gain, Internet users to the [] Website by creating a likelihood of confusion with the Complainant's Registered Marks as to the source, sponsorship, affiliation, or endorsement of the [] Website." Therefore, Complainant asserts that Respondent registered and is using the disputed domain name in bad faith.

B. Respondent

Respondent did not reply to Complainant's contentions.

6. Discussion and Findings

Pursuant to paragraph 15(a) of the Rules, a panel in UDRP proceedings "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".

Under paragraph 4(a) of the Policy, Complainant must prove the following:

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

A. Identical or Confusingly Similar

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

Complainant's trademark registrations in the Annexes to the Complaint demonstrate that Complainant has rights in the VIRGIN and VIRGIN MONEY marks.

The disputed domain name contains the VIRGIN mark and consists of the VIRGIN MONEY mark, with the letter "b" inserted in the middle, followed by the generic Top-Level Domain ("gTLD") ".com". Generally, "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". WIPO Overview of Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.7. The addition of the letter "b" does not prevent the disputed domain name from being confusingly similar to Complainant's VIRGIN or VIRGIN MONEY marks. [WIPO Overview 3.0](#), section 1.8 ("the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element."). Further, "[t]he applicable Top Level Domain ('TLD') in a domain name (e.g., '.com', '.club', '.nyc') is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test". [WIPO Overview 3.0](#), section 1.11.1.

Accordingly, the Panel finds that the disputed domain name is identical or confusingly similar to a mark in which Complainant has rights, and that paragraph 4(a)(i) of the Policy is satisfied.

B. Rights or Legitimate Interests

Complainant also must demonstrate that Respondent has “no rights or legitimate interests in respect of the domain name”, paragraph 4(a)(ii) of the Policy.

“Any of the following circumstances, in particular but without limitation, if found by the Panel to be proved based on its evaluation of all evidence presented, shall demonstrate [Respondent’s] rights or legitimate interests to the domain name for purposes of paragraph 4(a)(ii):

(i) before any notice to [Respondent] of the dispute, [Respondent’s] use of, or demonstrable preparations to use, the [disputed] domain name or a name corresponding to the [disputed] domain name in connection with a *bona fide* offering of goods or services; or

(ii) [Respondent] (as an individual, business, or other organization) ha[s] been commonly known by the [disputed] domain name, even if [Respondent has] acquired no trademark or service mark rights; or

(iii) [Respondent is] 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 trademark or service mark at issue.” Policy, paragraph 4(c).

There is no evidence that Respondent was making a *bona fide* use of the disputed domain name before receiving notice of this dispute, or that Respondent has been commonly known by the disputed domain name, or that Respondent is making a legitimate noncommercial or fair use of the disputed domain name. Rather, Complainant asserts that Respondent is operating a website that is basically copied from Santander bank and is infringing that banks’ copyrights, that contains broken links and nonfunctional buttons, and that contains a login page that is being used for phishing.

Complainant’s allegations make out a *prima facie* case that Respondent lacks rights or legitimate interests in the disputed domain name, which Respondent has not rebutted. See, e.g., *Virgin Enterprises Limited v. James Boisson*, WIPO Case No. [D2022-0896](#) (“The disputed domain name carries a clear risk of implied affiliation since consumers would expect to land on a website of the Complainant when typing in the Complainant’s VIRGIN trademark with two dictionary terms ‘business’ and ‘money’, or the Complainant’s VIRGIN MONEY trademark with the dictionary term ‘business,’ particularly since the Complainant also uses the VIRGIN MONEY trademarks for financial services. The risk of misleading consumers is compounded by a website at the disputed domain name that offers or purports to offer financial services. [...] The Complainant persuasively argues and provides evidence that the website may have been scraped from a third-party bank website and modified to refer to a non-existent company VBM UK Plc, and that the disputed domain name thus is not used by or in relation to a *bona fide* business. The Respondent has chosen not to reply to the Complaint. The Panel finds that the Complainant has made a *prima facie* case that the Respondent lacks rights or legitimate interests, and finds no indication in the evidence that the Respondent could claim rights or legitimate interests of his own in the term ‘Virginbusinessmoney’. Since the Respondent has no permission from the Complainant and chose not to respond, his use of the disputed domain name is deemed to be without rights or legitimate interests.”); *Diamond Hill Investment Group, Inc. v. Richard Stroud*, WIPO Case No. [D2016-0510](#) (“The Panel finds that the use of the Domain Name to divert Internet traffic to a scam or a phishing scheme is not a *bona fide* offering of goods or services.”); *Cantor Fitzgerald Securities, Cantor Index Limited v. Cantor Index Limited*, WIPO Case No. [D2010-2204](#) (“Complainant asserts it has not authorized or licensed Respondent to use or register its CANTOR mark in the domain name. [...] Complainant provided evidence that Respondent has a link at the website to an application form for allegedly opening an account with Respondent, which is used to harvest the confidential personal information of unsuspecting Internet users. This fraud, called phishing, cannot constitute a *bona fide* offering of goods or services.”); *Google Inc. v. Markus Weiler, Francotel Francophone Telecom*, WIPO Case No. [D2011-0921](#) (“There is no evidence in these Policy proceedings that the Complainant has authorised, licensed, or

permitted the Respondent to register or use the disputed domain name or to use the Trade Mark. The Complainant has prior rights in the Trade Mark which precede the Respondent's registration of the disputed domain name by over ten years. There is therefore a *prima facie* case that the Respondent has no rights or legitimate interests in the disputed domain name, and the burden of production is thus on the Respondent to rebut this presumption"); [WIPO Overview 3.0](#), section 2.13.1 ("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.").

Accordingly, the record supports a conclusion that Respondent has no rights or legitimate interests in respect of the disputed domain name, and that paragraph 4(a)(ii) of the Policy is satisfied.

C. Registered and Used in Bad Faith

Complainant also bears the burden of establishing that the "domain name has been registered and is being used in bad faith". Policy, paragraph 4(a)(iii). As set forth in the Policy, paragraph 4(b):

"[T]he following circumstances, in particular but without limitation, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith:

(i) circumstances indicating that [Respondent has] registered or [Respondent has] acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to [C]omplainant who is the owner of the trademark or service mark or to a competitor of that Complainant, for valuable consideration in excess of [Respondent's] documented out-of-pocket costs directly related to the domain name; or

(ii) [Respondent has] 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 [Respondent has] engaged in a pattern of such conduct; or

(iii) [Respondent has] registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the domain name, [Respondent has] intentionally attempted to attract, for commercial gain, Internet users to [Respondent's] web site or other online location, by creating a likelihood of confusion with Complainant's mark as to the source, sponsorship, affiliation, or endorsement of [Respondent's] website or location or of a product or service on [Respondent's] website or location."

"Given that the scenarios described in UDRP paragraph 4(b) are non-exclusive and merely illustrative, even where a complainant may not be able to demonstrate the literal or verbatim application of one of the above scenarios, evidence demonstrating that a respondent seeks to take unfair advantage of, abuse, or otherwise engage in behavior detrimental to Complainant's trademark would also satisfy Complainant's burden."

[WIPO Overview 3.0](#), section 3.1.

Complainant asserts that Respondent was aware of Complainant and its VIRGIN MONEY business at the time Complainant registered the disputed domain name, and that "Respondent has intentionally attempted to attract, for commercial gain, Internet users to the [] Website by creating a likelihood of confusion with the Complainant's Registered Marks as to the source, sponsorship, affiliation, or endorsement of the [] Website." Complainant further asserts that Respondent through its website is engaging in copyright infringement and phishing. Respondent has not sought to controvert these allegations.

Respondent's use of the disputed domain name appears to be an effort to capitalize on the goodwill associated with Complainant's mark, in order to attract users to the site and potentially gather their login information. This is being done without Complainant's permission. Respondent offers no explanation for such registration and use. This satisfies the requirements of the Policy, paragraph 4(a)(iii). See, e.g., *Virgin*

Enterprises Limited v. James Boisson, WIPO Case No. [D2022-0896](#) (“The evidence shows that the Respondent is using the disputed domain name to offer or purport to offer financial services. The Respondent’s use of the term ‘Virgin’ with the terms ‘money’ and ‘business’ on a website designed to look like a banking website, targeted notably at UK consumers, indicates that the Respondent was and is aware of the Complainant’s trademarks, and that he registered and is using the disputed domain name in bad faith because of its connection with the Complainant to create a likelihood of confusion with the Complainant’s trademarks. Further, the Panel finds that the combination of the terms ‘Virgin’ and ‘money’ in the disputed domain name for a website that purports to offer financial services in fact increases or is intended to increase this risk of confusion. The Panel is satisfied that the disputed domain name was registered and is being used in bad faith.”); *Allianz SE v. Withheld for Privacy Purposes, Privacy service provided by Withheld for Privacy ehf / Arinze Obiakor, SystemGram Communications Limited*, WIPO Case No. [D2021-1562](#) (finding bad faith due to registration by an unaffiliated entity of a domain name that is confusingly similar to a widely-known trademark, combining the trademark with a geographic descriptor in the disputed domain name, and use of the disputed domain name in connection with phishing); [WIPO Overview 3.0](#), section 3.4 (use of a domain name for phishing or identity theft may constitute bad faith).

Accordingly, the Panel finds that the record supports a conclusion that the disputed domain name has been registered and is being used in bad faith, and that paragraph 4(a)(iii) of the Policy is satisfied.

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, <virginbmoney.com>, be transferred to Complainant.

/Bradley A. Slutsky/

Bradley A. Slutsky

Sole Panelist

Date: August 24, 2022