

ADMINISTRATIVE PANEL DECISION

Virgin Enterprises Limited v. Registration Private, Domains By Proxy, LLC /
BIKASH KANTI DAS, SB ENTERPASE
Case No. D2022-2741

1. The Parties

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

Respondent is Registration Private, Domains By Proxy, LLC, United States of America / BIKASH KANTI DAS, SB ENTERPASE, India.

2. The Domain Name and Registrar

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

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on July 26, 2022. On July 27, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On July 28, 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 August 5, 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 August 10, 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 August 11, 2022. In accordance with the Rules, paragraph 5, the due date for Response was August 31, 2022. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on September 1, 2022.

The Center appointed Timothy D. Casey as the sole panelist in this matter on September 14, 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 a group of more than 40 businesses operating under the VIRGIN brand (the “Group”). The Group has more than 50 million customers and employs more than 60,000 people worldwide. Complainant has used VIRGIN as a trademark in connection with one or more of these various businesses since 1970. The Group established Virgin Galactic in 2004 to develop space vehicles, promote space tourism, and understand space science exploration, leading to a first test flight in 2010, and a first passenger space flight in 2021. Complainant owns a number of trademark registrations globally that comprise or include VIRGIN including the following representative marks (the “VIRGIN Marks”) registered in the United Kingdom (the “UK”) and the European Union (the “EU”):

| Mark/Country | International Classes | Registration No. | Filing Date |
|-----------------------------|--|------------------|--------------------|
| VIRGIN (DESIGN)/UK | 03, 05, 09, 11, 12, 14, 16, 31, 32, 33, 35, 36, 38, 39, 41, 42, 43, 44, 45 | UK00003163127 | May 5, 2016 |
| VIRGIN (DESIGN)/EU | 03, 05, 09, 11, 12, 14, 16, 31, 32, 33, 35, 36, 38, 39, 41, 42, 43, 44, 45 | 015404841 | May 5, 2016 |
| VIRGIN GALACTIC/UK | 12, 16, 25, 28, 39 | UK00003187698 | September 26, 2016 |
| VIRGIN GALACTIC/EU | 12, 16, 25, 28, 39 | 004756921 | December 1, 2005 |
| VIRGIN GALACTIC (DESIGN)/EU | 12, 16, 25, 28, 39 | 004757217 | December 1, 2005 |
| VIRGIN GALACTIC (DESIGN)/UK | 12, 39 | UK00003195622 | November 8, 2016 |
| VIRGIN GALACTIC(DESIGN)/UK | 12, 16, 25, 28, 37, 39, 40, 42 | UK00003757868 | February 22, 2022 |

Complainant owns over 5,000 domain names that include “virgin” in various forms and features information about Complainant and its various businesses, ventures, and foundations through the “www.virgin.com” website. The Group also operates on various social medial platforms utilizing the VIRGIN Marks that collectively receive over 37 million views each year.

The disputed domain name was registered on June 3, 2022. The disputed domain name has been used in connection with a website branded as “Virgin Galactick” featuring images and videos associated with aircraft and spacecraft, including some bearing the VIRGIN Marks, promoting engineering services associated with aerospace and defense, and including office addresses in Singapore and India.

5. Parties’ Contentions

A. Complainant

Complainant contends that the disputed domain name, which includes “virgin”, “galactic”, and an additional letter “k” at the end, incorporates the VIRGIN Marks, is an obvious misspelling of “galactic”, is confusingly similar to the VIRGIN Marks. Complainant contends that misspelling of the term “virgin galactic” is not sufficient to avoid confusion on the part of Internet users because it suggests that the disputed domain name is operated by or associated with Complainant’s Virgin Galactic business.

Complainant provided copies of screenshots of Respondent's website and contends that it makes prominent use of the VIRGIN Marks and within videos and images available on Respondent's website without Complainant's authorization. Complainant further contends that the stylization and color style of Respondent's website is similar to Complainant's Virgin Galactic website and is being used to impersonate Complainant or imply an association with Complainant's business.

Complainant further contends that Respondent is not commonly known by the disputed domain name or any marks being used on Respondent's website. Complainant asserts that text on Respondent's website under the heading "WHAT WE DO" has been copied from a third party's website and that all of the office addresses provided on the website are not genuine, with two listing incorrect street addresses and two corresponding to unrelated business, *i.e.*, a restaurant and a social mutual benefits company limited. Complainant also contends that links to social media pages provided on Respondent's website do not resolve anywhere. Complainant contends the use of false information, together with copied third party text, do not evidence that Respondent is using or preparing to use the disputed domain name in connection with a *bona fide* offering of goods or services or to make a legitimate noncommercial or fair use of the disputed domain name.

Complainant believes Respondent registered and is using the disputed domain name in bad faith because: (1) Respondent had to know of Complainant's rights in the VIRGIN Marks prior to registration of the disputed domain name, which is further evidenced by Respondent's use of the VIRGIN Marks, videos and images on Respondent's website; (2) Respondent's choice of a confusingly similar domain name to the VIRGIN Marks, coupled with Respondent's use of the VIRGIN Marks, videos, images and Complainant's stylization on Respondent's website and (3) Respondent use of the disputed domain name attempts to attract, for commercial gain, Internet users looking for Complainant's website and is disruptive to Complainant's business and will harm its reputation.

B. Respondent

Respondent did not reply to Complainant's contentions.

6. Discussion and Findings

A. Identical or Confusingly Similar

Complainant's use of the VIRGIN Marks as early as 1970, more than 50 years prior to registration of the disputed domain name, and Complainant's registration of many VIRGIN Marks since then, are more than sufficient to establish that Complainant has trademark rights in the VIRGIN Marks.

Complainant contends that the disputed domain name is confusingly similar to the VIRGIN Marks. Complainant contends that the addition of the letter "k" after "galactic" does not prevent a finding of confusing similarity to Complainant's VIRGIN Marks.

The Panel agrees and finds that the disputed domain name is confusingly similar to the VIRGIN Marks.

B. Rights or Legitimate Interests

The Panel finds that Respondent has no rights or legitimate interests in the disputed domain name. Respondent does not appear to be commonly known by the disputed domain name or the VIRGIN Marks. Complainant has not licensed or authorized Respondent to use or register the disputed domain name or any of the marks, images, or videos on Respondent's website. Regardless of what Respondent's true intention may be in operating Respondent's website, use of the disputed domain name to create an association with Complainant or Complainant's business and/or to confuse Internet users is not a legitimate noncommercial or fair use and does not constitute a *bona fide* offering of goods or services. Respondent has not rebutted Complainant's *prima facie* case and has provided no arguments or evidence showing potential rights or

legitimate interests in the disputed domain name.

Furthermore, the nature of the disputed domain name, comprising substantially all of the VIRGIN Marks with an added letter “k,” carries a risk of implied affiliation with Complainant as it effectively impersonates or suggests sponsorship or endorsement by Complainant, and accordingly cannot constitute a fair use in these circumstances. See *Banque et Caisse d’Epargne de l’Etat, Luxembourg, v. Domain Admin, Whoisprotection.cc / hans larsson*, WIPO Case No. [D2022-1505](#) (“the Panel finds that subtle misspellings of a complainant’s mark in a domain name can also impersonate the complainant, as there is a risk that Internet users will not notice the difference between such misspelling and the complainant’s mark”). See also section 2.5.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”).

Finally, Complainant has provided evidence that the disputed domain name is being used in connection with potentially fraudulent office addresses and social media links, which use cannot confer rights or legitimate interests on Respondent.

For these reasons, the Panel finds that Respondent has no rights or legitimate interests in the disputed domain name.

C. Registered and Used in Bad Faith

Given i) the timing of Complainant’s first use and first registration of the VIRGIN Marks and Complainant’s use of the VIRGIN Marks in association with the noted goods, ii) the nature of the disputed domain name in combination with VIRGIN Marks and Complainant images and video being used on Respondent’s website, iii) the subsequent timing of the registration of the disputed domain name, iv) Complainant’s prior trademark rights in the UK and the EU, and v) evidence of Respondent’s subsequent usage, the Panel finds that Respondent clearly knew of the VIRGIN Marks at the time of registration of the disputed domain name. Respondent’s registration of the disputed domain name was therefore in bad faith.

In addition, the Panel finds the subsequent usage of the disputed domain name in association with Respondent’s website in a manner that draws a false association with Complainant, that attempts to attract for commercial gain Internet users looking for Complainant’s website, that is disruptive to Complainant’s business, and that may harm Complainant’s reputation, constitutes usage in bad faith consistent with paragraph 4(b)(iv) of the Policy. Furthermore, Respondent’s utilization of false office address information within Respondent’s website further points to bad faith intent.

The Panel concludes that the disputed domain name was registered and is being used in bad faith.

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

/Timothy D. Casey/

Timothy D. Casey

Sole Panelist

Date: September 30, 2022