

ADMINISTRATIVE PANEL DECISION

Virgin Enterprises Limited v. Registration Private, Domains By Proxy, LLC /
Vladimir DevOps
Case No. D2022-3062

1. The Parties

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

Respondent is Registration Private, Domains By Proxy, LLC, United States of America (“United States”) / Vladimir DevOps, Ukraine.

2. The Domain Name and Registrar

The disputed domain name <virgingalacticgroup.com> (the “Domain Name”) 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 August 18, 2022. On August 19, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On August 19, 2022, the Registrar transmitted by email to the Center its verification disclosing registrant and contact information for the Domain Name, which differed from the named Respondent and contact information in the Complaint. The Center sent an email communication to Complainant on August 22, 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 23, 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 25, 2022. In accordance with the Rules, paragraph 5, the due date for Response was September 14, 2022. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on September 20, 2022.

The Center appointed Kimberley Chen Nobles as the sole panelist in this matter on September 30, 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

Under paragraph 10 of the Rules, the Panel is required to ensure that the Parties are treated with equality and that each Party is given a fair opportunity to present its case, and also that the administrative proceeding takes place with due expedition.

The mailing address provided by Respondent is stated to be in 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 it should. The Panel has reached this conclusion in part because the Panel does not believe Respondent's purported mailing address in Ukraine to be genuine. The Panel notes in particular that that address includes a supposed street name which does not appear to correspond with any genuine street name in that city. This is corroborated by the fact that the courier used for delivering written notice was also unable to locate the address.

There is no evidence that suggests that the Notification of Complaint sent by email to Respondent 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 the named privacy service.

The Panel also notes that Complainant has specified in the Complaint that any challenge made by Respondent to any decision to transfer or cancel the 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, GoDaddy.com, LLC, is in Tempe, Arizona, United States.

It is moreover noted that, for the reasons which are set out later in this Decision, the Panel has no serious doubt (albeit in the absence of any Response) that Respondent registered and has used the Domain Name in bad faith and with the intention of unfairly targeting Complainant's goodwill in its trademark.

The Panel concludes that the Parties have been given a fair opportunity to present their 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 part of the Virgin Group, a diverse range of sectors of over 40 businesses, including Virgin Galactic, which develops space vehicles, promotes and undertakes space travel; and Virgin Money, which provides financial services. The Virgin Group first entered the market of financial services in 1995 under the brand Virgin Direct. In 2002, the business changed its name to Virgin Money. Virgin Money is currently one of the largest banks and serves around 6.4 million customers in the United Kingdom. It offers a number of personal and business financial services to its customers, including providing and managing clients' personal and business bank accounts and savings accounts, providing loans and advice on investments and financial planning as well as services relating to insurance, credit cards, mortgages, pensions and currency services and protection products to its customers, and charitable fundraising services.

Complainant owns numerous registered trademarks for its VIRGIN and VIRGIN GALACTIC marks, including:

- UK Trade mark Registration No. UK00001585773 for the mark VIRGIN, in International Class 36, registered October 20, 1995;
- European Union (EU) Trade mark Registration No. 004262093 for the mark VIRGIN, in International Classes 35, 36, 37, and 44, registered March 17, 2006;
- International Trademark Registration No. 1141309 for the mark VIRGIN, in International Class 09, 35, 36, 38, and 41, registered May 21, 2012;
- UK Trade mark Registration No. UK00003187698 for the mark VIRGIN GALACTIC, in International Classes 12, 16, 25, 28, and 39, registered January 13, 2017;
- EU Trade mark Registration No. 004756921 for the mark VIRGIN GALACTIC, in International Classes 12, 16, 25, 28, and 29, registered January 18, 2007;
- International Trademark Registration No. 1489392 for the mark VIRGIN GALACTIC, in International Classes 37, 40, and 42 registered July 10, 2019.

Complainant owns and has registered numerous domain names consisting of or incorporating the VIRGIN mark including domain name <virgin.com> which it has operated since 2000 to promote the activities of the VIRGIN Group and its businesses, ventures and foundations, domain name <virgingalactic.com> which it has operated since around 2002. The Virgin Money business in the UK has operated a website at "www.virginmoney.com" since 1998, where it offers and provides information about its personal and business banking products and services, provides application forms for its financial products and allows customers to manage their accounts online. Virgin Money also offers a wide range of business banking services, and more information can be found relating to these on the dedicated business banking webpages at "www.uk.virginmoney.com/business".

The Domain Name was registered on August 2, 2022. It resolves to a website (the "Respondent's Website") that offer investment products and services under the VIRGIN GALACTIC mark. The website prominently features the VIRGIN mark and logo, imitates the look and feel of Complainant's "www.virgin.com" and "www.virgingalactic.com" websites, refers to various of Complainant's Virgin Group companies and makes reference to Complainant's newsworthy events.

6. Parties' Contentions

A. Complainant

Complainant contends that (i) the Domain Name is identical or confusingly similar to Complainant's trademarks; (ii) Respondent has no rights or legitimate interests in the Domain Name; and (iii) Respondent registered and is using the Domain Name in bad faith.

In particular, with regards to the first element, Complainant states that the Virgin Group serves over 50 million customers worldwide and employs more than 60,000 people across five business sectors and five continents in financial services, health and wellness, music and entertainment, people and planet, telecommunications and media, travel and leisure, and space. Complainant owns approximately 3,500 trade mark applications and registrations worldwide and owns over 5000 domain names consisting of or incorporating the VIRGIN mark. The Virgin Galactic business was established in 2004 and culminated in commercial passenger space travel in 2021, which has been publicized worldwide. The Domain Name incorporates Complainant's VIRGIN and VIRGIN GALACTIC marks in their entirety, with the addition of the term "group". Complainant asserts that such addition of the term "group" does not detract from confusing similarity of Complainant's marks.

With regards to the second element, Complainant states that the Domain Name resolves to a website that purports to offer investment products and services under the mark VIRGIN GALACTIC. Complainant contends that it has trademark registrations for VIRGIN and that Respondent registered and is using the Domain Name with the intention to confuse Internet users looking for *bona fide* and well-known VIRGIN

products and services.

Complainant asserts that: Respondent's Website imitates the look and feel of Complainant's "www.virgin.com" and "www.virgingalactic.com" websites, and refers to various of Complainant's Virgin Group companies. The website also includes "Profit Calculator" and a "Referral Program" which promotes a purported program to increase income by referring others to an investment scheme, contains a "SignUp Now" form that requests personal information such as name, email address and a password, a "Promoaction" tab that resolves to a webpage purporting to promote a competition run by Virgin Galactic in partnership with the well-known vehicle brand Land Rover. When the user clicks on the "Participate" button, a webpage showing an entry form requesting personal details is presented, as well as the statement "To try your luck, you must fill out a form and make a deposit of \$500 or more!". Each webpage of Respondent's Website prominently uses a mark identical or similar Complainant's registered marks VIRGIN, VIRGIN GALACTIC, Virgin Signature Logo and the Virgin Galactic Iris Logo. The Virgingalacticgroup.com Website also refers frequently throughout to Complainant's registered mark VIRGIN GALACTIC.

Respondent's website is almost identical in content and presentation to the websites, which can be found at Complainant's websites such as "www.virgingalacticinvest.com" and "www.virgin-investgalactic.com". The website terms and conditions appear to be copied from Complainant's website and contain references to news events concerning Complainant. Links on the website also resolve to Complainant's social media sites.

Complainant notes that it has no affiliation with Respondent, nor authorized Respondent to register or use a domain name, which includes Complainant's trademarks, and that Respondent has no rights or legitimate interests in the registration and use of the Domain Name.

With regards to the third element, Complainant states that its VIRGIN and VIRGIN GALACTIC marks are very well known, and contends that Respondent is clearly aware of Complainant as demonstrated by the use of Complainant's marks, and Respondent's use to redirect the Domain Name to websites that purport to promote and provide options to sign up to an investment program that Complainant contends is false, and designed to obtain sensitive personal details for fraudulent commercial gain. Complainant contends that Respondent has acted in bad faith in acquiring and setting up the Domain Name, when Respondent clearly knew of Complainant's rights.

B. Respondent

Respondent did not reply to Complainant's contentions.

7. Discussion and Findings

Under paragraph 4(a) of the Policy, to succeed Complainant must satisfy the Panel that:

(i) the 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 Domain Name; and

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

Section 4.3 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)") states that failure to respond to the complainant's contentions would not by itself mean that the complainant is deemed to have prevailed; a respondent's default is not necessarily an admission that the complainant's claims are true.

Thus, although in this case Respondent has failed to respond to the Complaint, the burden remains with

Complainant to establish the three elements of paragraph 4(a) of the Policy by a preponderance of the evidence. See, e.g., *The Knot, Inc. v. In Knot We Trust LTD*, WIPO Case No. [D2006-0340](#).

A. Identical or Confusingly Similar

Ownership of a trademark registration is generally sufficient evidence that a complainant has the requisite rights in a mark for purposes of paragraph 4(a)(i) of the Policy. See [WIPO Overview 3.0](#), section 1.2.1. Complainant provided evidence of its rights in the VIRGIN trademarks, as noted above. Complainant has also submitted evidence, which supports that the VIRGIN trademarks are widely known and a distinctive identifier of Complainant's products and services. Complainant has therefore proven that it has the requisite rights in the VIRGIN trademarks.

With Complainant's rights in the VIRGIN trademarks established, the remaining question under the first element of the Policy is whether the Domain Name, typically disregarding the Top-Level Domain ("TLD") in which it is registered (in this case, ".com"), is identical or confusingly similar to Complainant's trademark. See, e.g., *B & H Foto & Electronics Corp. v. Domains by Proxy, Inc. / Joseph Gross*, WIPO Case No. [D2010-0842](#).

Here, the Domain Name is confusingly similar to Complainant's VIRGIN trademarks. These trademarks, which are fanciful and inherently distinctive, are recognizable in the Domain Name. In particular, the Domain Name inclusion of Complainant's trademark VIRGIN and/or the trademark VIRGIN GALACTIC in its entirety, in the latter case with an addition of the term "group" after "Virgingalactic" in the Domain Name does not prevent a finding of confusing similarity between the Domain Name and the VIRGIN trademarks. See [WIPO Overview 3.0](#), section 1.8.

Thus, the Panel finds that Complainant has satisfied the first element of the Policy.

B. Rights or Legitimate Interests

Under paragraph 4(a)(ii) of the Policy, a complainant must make a *prima facie* showing that a respondent possesses no rights or legitimate interests in a disputed domain name. See, e.g., *Malayan Banking Berhad v. Beauty, Success & Truth International*, WIPO Case No. [D2008-1393](#). Once a complainant makes such a *prima facie* showing, the burden of production shifts to the respondent, though the burden of proof always remains on the complainant. If the respondent fails to come forward with relevant evidence showing rights or legitimate interests, the complainant will have sustained its burden under the second element of the UDRP.

From the record in this case, it is evident that Respondent was, and is, aware of Complainant and its VIRGIN trademarks, and does not have any rights or legitimate interests in the Domain Name. Complainant has confirmed that Respondent is not affiliated with Complainant, or otherwise authorized or licensed to use the VIRGIN trademarks or to seek registration of any domain name incorporating the trademarks. Respondent is also not known to be associated with the VIRGIN trademarks and there is no evidence showing that Respondent has been commonly known by the Domain Name.

In addition, Respondent has not used the Domain Name in connection with a *bona fide* offering of goods or services or a legitimate noncommercial or fair use. Rather, Complainant asserts that the Domain Name previously redirect to a website that appeared to duplicate Complainant's website, including prominently displaying Complainant's trademarks VIRGIN and VIRGIN GALACTIC and featuring investment products and services such as those that are also offered on Complainant's website, in a display format that appeared to be an imitation of Complainant's website, as noted above, which has not been rebutted by Respondent. Such use does not constitute a *bona fide* offering of goods or services or a legitimate noncommercial or fair use and cannot under the circumstances confer on Respondent any rights or legitimate interests in the Domain Name. See, e.g., *Intesa Sanpaolo S.p.A. v. Charles Duke / Oneandone Private Registration*, WIPO Case No. [D2013-0875](#).

Accordingly, Complainant has provided evidence supporting its *prima facie* claim that Respondent lacks any rights or legitimate interests in the Domain Name. Respondent has failed to produce countervailing evidence of any rights or legitimate interests in the Domain Name. Thus, the Panel concludes that Respondent does not have any rights or legitimate interests in the Domain Name and Complainant has met its burden under paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

The Panel finds that Respondent's actions indicate that Respondent registered and is using the Domain Name in bad faith.

Paragraph 4(b) of the Policy provides a non-exhaustive list of circumstances indicating bad faith registration and use on the part of a domain name registrant, namely:

“(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 Panel finds that Complainant provided ample evidence to show that registration and use of the VIRGIN trademarks long predate the registration of the Domain Name. Complainant is also well established and known. Indeed, the record shows that Complainant's VIRGIN trademarks and related products and services are widely known and recognized. Therefore, Respondent was likely aware of the VIRGIN trademarks when it registered the Domain Name or knew or should have known that the Domain Name was confusingly similar to Complainant's trademarks. See [WIPO Overview 3.0](#), section 3.2.2; see also *TTT Moneycorp Limited v. Privacy Gods / Privacy Gods Limited*, WIPO Case No. [D2016-1973](#).

The Panel therefore finds that Respondent's awareness of Complainant's trademark rights at the time of registration suggests bad faith. See *Red Bull GmbH v. Credit du Léman SA, Jean-Denis Deletraz*, WIPO Case No. [D2011-2209](#); *Nintendo of America Inc v. Marco Beijen, Beijen Consulting, Pokemon Fan Clubs Org., and Pokemon Fans Unite*, WIPO Case No. [D2001-1070](#); *BellSouth Intellectual Property Corporation v. Serena, Axel*, WIPO Case No. [D2006-0007](#).

Further, the registration of the Domain Name incorporating Complainant's VIRGIN trademark in its entirety suggests Respondent's actual knowledge of Complainant's rights in the VIRGIN trademarks at the time of registration of the Domain Name and its effort to opportunistically capitalize on the registration and use of the Domain Name. In addition, while, at the time of filing of the Complaint, the Domain Name includes Complainant's trademark VIRGIN and/or VIRGIN GALACTIC in its entirety, in the latter case with an addition of the word “group” which confusingly similar to Complainant's domain name <virgingalactic.com>, directly associates with Complainant's VIRGIN trademarks and business activities, and directly evokes Complainant's activities in the field of space travel and investment, further indicating Respondent's actual knowledge of Complainant and its trademarks, and that Respondent's registration of the Domain Name is in bad faith.

Moreover, Respondent registered and is using the Domain Name to confuse and mislead consumers looking for *bona fide* and well-known VIRGIN products and services of Complainant or authorized partners of Complainant. The use of the VIRGIN mark as the dominant part of the Domain Name is intended to capture Internet traffic from Internet users who are looking for Complainant's products and services. Such use and association of the Domain Name to divert users to a webpage that appeared to duplicate Complainant's website, could result in causing confusion with Complainant's business activities. It may confuse Internet users who are looking for Complainant's legitimate website and deceive Internet users into thinking that Respondent is somehow connected to Complainant, which is not the case. In addition, Respondent's website also provides the opportunity for Internet users to provide personal data, which may result in use of such data for malicious or fraudulent purposes.

Moreover, the Panel also notes the distinctiveness and reputation of the VIRGIN trademarks, Respondent's use of a privacy service, the failure of Respondent to submit a response or to provide any evidence of actual or contemplated good faith use, and the implausibility of any good faith use to which the Domain Name may be put.

Accordingly, the Panel finds that Respondent has registered and is using the Domain Name in bad faith and Complainant succeeds under the third element of 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 Domain Name <virgingalacticgroup.com> be transferred to Complainant.

/Kimberley Chen Nobles/

Kimberley Chen Nobles

Sole Panelist

Date: October 14, 2022