

ADMINISTRATIVE PANEL DECISION

Virgin Enterprises Limited v. Vfhd Hfd, virginmegastore, Oure Rahfd
Case No. D2023-0254

1. The Parties

The Complainant is Virgin Enterprises Limited, United Kingdom (“UK”), represented by A.A.Thornton & Co, UK.

The Respondents are Vfhd Hfd, virginmegastore, Saudi Arabia, Vfhd Hfd, Saudi Arabia, and Oure Rahfd, Saudi Arabia.

2. The Domain Names and Registrar

The disputed domain names <virginmegastore.shop>, <virginmegastore-sa.shop>, <virginmegastore-ksa.shop>, <virginmegastoree-ksa.shop>, and <virginmegastoree-sa.shop>, are registered with Hostinger, UAB (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on January 19, 2023. On January 20, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names <virginmegastore.shop>, <virginmegastoree-ksa.shop>, and <virginmegastore-ksa.shop>. On January 23, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain names which differed from the named Respondents (Domain Admin, Privacy Protect, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on January 23, 2023 providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint.

The Complainant requested the addition of two domain names, <virginmegastoree-sa.shop> and <virginmegastore-sa.shop>, on January 24, 2023. On January 25, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the additional disputed domain names. On January 26, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain names. The Center sent an email communication to the Complainant on January 27, 2023 providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint or to file a separate complaint for each of the disputed domain names. The Complainant filed an amended Complaint on February 1, 2023.

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 the Respondents of the Complaint, and the proceedings commenced on February 8, 2023. In accordance with the Rules, paragraph 5, the due date for Response was February 28, 2023. The Respondents did not submit any response. Accordingly, the Center notified the Respondents’ default on March 2, 2023.

The Center appointed Reyes Campello Estebaranz as the sole panelist in this matter on March 10, 2023. 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 is part of the Virgin group of companies, and is responsible for registering and maintaining the group’s VIRGIN brand and associated trademarks (the “VIRGIN marks”) and licensing them to the Virgin businesses. There are now over 40 such businesses in a diverse range of sectors (covering financial services, health and wellness, music and entertainment, people and planet, telecommunications and media, travel and leisure, and space) that employ more than 60,000 people in five continents.

One of the Complainant’s VIRGIN marks is VIRGIN MEGASTORE, which was founded in 1976 as a records chain of stores, being the first VIRGIN MEGASTORE opened in 1979 in London. Throughout the 1980s and 1990s, over 100 VIRGIN MEGASTORE stores opened in the UK, and around the world, including in Asia, North America and the Middle East. The first United Arab Emirates (“UAE”) based VIRGIN MEGASTORE opened in 2001, and the brand has expanded to have over 40 stores in the region as well as dedicated websites for the Kingdom of Saudi Arabia (“KSA”), Kuwait, Qatar and UAE, which can be accessed via the Complainant’s corporate website for this brand at “www.virginmegastore.com”. Today, the VIRGIN MEGASTORE business retails a wide range of items such as electronics, tech and gaming products, music and books, as well as sports and lifestyle products, clothing, toys, etc., both in physical stores and online.

The Complainant owns a substantial portfolio of registered trademarks in multiple jurisdictions for the VIRGIN brand, the VIRGIN Signature Logo, and other VIRGIN marks, including the VIRGIN MEGASTORE mark. These trademark registrations include the following:

- European Union Trade Mark Registration No. 001798560, VIRGIN, registered on June 5, 2002, in classes 9 and 39;
- European Union Trade Mark Registration No. 015404841, VIRGIN, registered on December 2, 2016, in classes 3, 5, 9, 11, 12, 14, 16, 31, 32, 33, 35, 36, 38, 39, 41, 42, 43, 44, and 45;
- Saudi Arabia Trademark Registration No. 767/33, VIRGIN MEGASTORE, registered on January 7, 2005, in class 35; and
- Saudi Arabia Trademark Registration No. 767/34, VIRGIN MEGASTORE, registered on January 7, 2005, in class 43, (collectively the “VIRGIN mark” and the “VIRGING MEGASTORE mark”, respectively).

Prior decisions under the Policy have recognized the well known character of the VIRGIN mark,¹ and the VIRGIN MEGASTORE mark.²

The Complainant's group further owns numerous domain names corresponding to its VIRGIN marks and the VIRGIN MEGASTORE mark, which resolve to its corporate websites where the Complainant's products and services are promoted and commercialized. These domain names include <virgin.com> (registered on September 10, 1997) and <virginmegastore.com> (registered on March 29, 2000).

The disputed domain names are:

- <virginmegastore.shop> (the "First Disputed Domain Name") that was registered on December 12, 2022;
- <virginmegastore-sa.shop> (the "Second Disputed Domain Name") that was registered on December 26, 2022;
- <virginmegastore-ksa.shop> (the "Third Disputed Domain Name") that was registered on January 3, 2023;
- <virginmegastoree-ksa.shop> (the "Fourth Disputed Domain Name") that was registered on January 4, 2023; and
- <virginmegastoree-sa.shop> (the "Fifth Disputed Domain Name") that was registered on January 22, 2023, (collectively "the disputed domain names").

The Registrant of the First, Third and Fourth Disputed Domain Names is "Vfhd Hfd, virginmegastore", the Registrant of the Second Disputed Domain Name is "Vfhd Hfd", and the Registrant of the Fifth Disputed Domain Name is "Oure Rahfd", (collectively "the Respondent").

The disputed domain names are apparently currently inactive resolving to Internet browser error messages. According to the evidence provided by the Complainant, the First, Third and Fourth Disputed Domain Names resolved to similar websites in Arabic language that purportedly sold a wide range of electrical goods. These websites included the Complainant's VIRGIN MEGASTORE Logo at the top right or left of each webpage, as well as in their copyright notice at the bottom of each site ("Virgin Megastore All Rights Reserved 2023 ©"). These websites further included the VIRGIN MEGASTORE mark in their "Who we are" section, and their "Customer service" and "Privacy Policy" pages, with expressions such as "Virgin Megastore ('Virgin', 'we', 'us')".

5. Parties' Contentions

A. Complainant

Key contentions of the Complaint may be summarized as follows:

The disputed domain names incorporate the VIRGIN and VIRGIN MEGASTORE marks in their entirety. The First Disputed Domain Name contains no other element, and so is identical to the VIRGIN MEGASTORE mark, and the other disputed domain names include the components "-ksa" and "-sa" respectively, which are standard country abbreviations for the Kingdom of Saudi Arabia. The addition of these geographical indications do not avoid these domain names to be found confusingly similar to the Complainant's trademarks, on the contrary, as the Complainant operates and is renown in this country, the addition of these elements exacerbates the likelihood of confusion. Additionally, the generic Top-Level-Domain ("gTLD") ".shop" reinforces the confusing similarity as it refers to a retail location, and the VIRGIN

¹ See, among others, *Virgin Enterprises Limited v. Willem Sternberg De Beer*, WIPO Case No. [D2017-1851](#); or *Virgin Enterprises Limited v. Whois Privacy Protection Service, Inc. (customer number RCVHXQYR) / Paul Greg*, WIPO Case No. [D2017-1877](#).

² See, among others, *Virgin Enterprises Limited v. Ali Khan*, WIPO Case No. [DTV2001-0029](#).

MEGASTORE mark is reputed for retail services.

The Respondent has no rights or legitimate interests in respect of the disputed domain names. The Respondent has no authorization to use the Complainant's trademarks, and the disputed domain names were used to resolve to websites that prominently displayed the VIRGIN MEGASTORE mark. These websites were seeking to confuse Internet users searching for the Complainant's stores into believing that these sites were provided by directly connected to or endorsed by the Complainant or its VIRGIN MEGASTORE businesses, which is not the case, and all have been deactivated showing a similar pattern of use and a common control. The Complainant suspects that the Respondent's websites were set up for the purpose of gathering personal sensible information from users likely for the purposes of phishing for illegitimate commercial gain, which may tarnish the Complainant's trademarks reputation.

The disputed domain names were registered and are being used in bad faith. The Complainant's trademarks are famous and extensively used over the Internet. The disputed domain names were registered and were used for the purpose of intentionally attracting, for illegitimate commercial gain, Internet users to the Respondent's websites and WhatsApp contacts by creating a likelihood of confusion with the Complainant's trademarks. The current non-use of the disputed domain names do not prevent a finding of bad faith under the doctrine of passive holding. Given the circumstances, including *inter alia* the significant reputation of the Complainant's trademarks, the apparent lack of legitimate business information provided by the Respondent and the clearly abusive nature of its websites, it is not possible to conceive of any plausible active use (actual or contemplated) of the disputed domain names by the Respondent that would not be illegitimate.

The Complainant has cited previous decisions under the Policy as well as various paragraphs of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)") that it considers supportive of its position, and requests the transfer of the disputed domain names.

B. Respondent

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

6. Discussion and Findings

The Complainant has made the relevant assertions as required by the Policy and the dispute is properly within the scope of the Policy. The Panel has authority to decide the dispute examining the three elements in paragraph 4(a) of the Policy, taking into consideration all of the relevant evidence, annexed material and allegations, and performing some limited independent research under the general powers of the Panel articulated, *inter alia*, in paragraph 10 of the Rules.

A. Preliminary Issue: Complaint Consolidated against Multiple Registrants and Addition of two Domain Names to the Proceedings

The Panel considers that the disputed domain names are subject to a common control, and the consolidation is fair and equitable to the Parties. In this respect, the Panel notes that, according to the evidence provided by the Complainant, three of the disputed domain names (the First, Third and Fourth Disputed Domain Names) had a very similar content, linked to almost identical websites in Arabic language that purportedly commercialized the same products (a wide range of electrical goods). Further, and all the disputed domain names were registered within a short period (within December 12, 2022 and January 22, 2023) with the same Registrar behind partially identical names, and providing addresses that when searched over the Internet appear unlikely to be legitimately linked to the Respondent, and the dispute domain names follow a highly similar naming pattern. See section 4.11.2, [WIPO Overview 3.0](#).

For the same reasons, the Panel further accepts the addition of two domain names to the proceedings. The addition of domain names after the filing of a Complaint has been allowed in the past in other UDRP proceedings, see section 4.12.2, [WIPO Overview 3.0](#), and it is based on paragraphs 10(a), 10(b), and 10(e) of the Rules.

A. Identical or Confusingly Similar

The Complainant indisputably has rights in the registered trademarks VIRGIN and VIRGIN MEGASTORE, both by virtue of its numerous trademark registrations and as a result of its continuous use and reputation of these marks.

All of the disputed domain names reproduce these trademarks with the addition in all the disputed domain names, except the First Disputed Domain Name, of the terms “sa” or “ksa” separated by a hyphen, the addition of a letter “e” at the end of the term “megastore” in the Fifth Disputed Domain Name, and the gTLD “.shop”. The VIRGIN and VIRGIN MEGASTORE marks are recognizable in the disputed domain names. The addition of the terms “sa” or “ksa” and an extra letter “e” does not prevent a finding of confusing similarity. Further, the gTLD “.shop” is a technical requirement, generally disregarded for the purpose of the analysis of the confusing similarity. See sections 1.7, 1.8, and 1.11.1 of the [WIPO Overview 3.0](#).

It is further remarkable that the additional letter “e” included at the end of the term “megastore” in the Fifth Disputed Domain Name constitutes, in the Panel’s view, a common, obvious, or intentional misspelling of the VIRGIN MEGASTORE mark, which may point to an intention on the part of the Respondent to confuse users seeking or expecting the Complainant. See section 1.9 of the [WIPO Overview 3.0](#).

Accordingly, the Panel finds that the First Disputed Domain Name is identical to the VIRGIN MEGASTORE mark, and all other disputed domain names are confusingly similar to the Complainant’s trademarks. The first element of the Policy under paragraph 4(a)(i) has been satisfied.

B. Rights or Legitimate Interests

The Complainant’s assertions and evidence effectively shift the burden to the Respondent of producing evidence of rights or legitimate interests in the disputed domain names, providing the circumstances of paragraph 4(c) of the Policy, without limitation, in order to rebut the Complainant’s *prima facie* case. However, the Respondent has not replied to the Complainant’s contentions, not providing any explanation or evidence of rights or legitimate interests in the disputed domain names. See section 2.1 of the [WIPO Overview 3.0](#).

The applicable standard of proof in UDRP cases is the “balance of probabilities” or “preponderance of the evidence”, being the Panel prepared to draw certain inferences in light of the particular facts and circumstances of the case. See section 4.2 of the [WIPO Overview 3.0](#).

The Panel considers that there is no evidence in the record suggesting that the Respondent has rights or legitimate interests in the disputed domain names. Nothing in the record suggests that the Respondent is commonly known by the disputed domain names, or that the Complainant has authorized the Respondent to use its trademarks. The Parties have no business relationship, and the Panel finds that the Respondent is not making a legitimate noncommercial or fair use of the disputed domain names.

The Panel considers that, as the disputed domain names generate an affiliation with the Complainant and its trademarks, the use of the disputed domain names cannot be considered fair use under the Policy. The fact that the First Disputed Domain Name is identical to the VIRGIN MEGASTORE mark, and all other disputed domain names incorporate this trademark adding the elements “sa” or “ksa” that generally refer to a geographical area or country, namely “Saudi Arabia” or the “Kingdom of Saudi Arabia”, separated by hyphens, generates an implied affiliation. The disputed domain names suggest that they are owned by the Complainant or one of its related or affiliated companies for this specific country. In this respect, the Panel notes that the Complainant operates numerous websites for different jurisdictions as part of its business, and

extensively operates in Saudi Arabia and other countries of the Middle East, so the disputed domain names may be considered by Internet users as new domain names part of the Complainant's business for websites related to this jurisdiction.

The Panel considers further remarkable the use of a gTLD, ".shop" in all the disputed domain names, which may contribute to the confusing similarity and the likelihood of confusion or affiliation with the Complainant and/or its businesses, as the meaning of the word "shop" is connected to the field (of retail services) where the Complainant operates under the VIRGING MEGASTORE mark.

The Panel further considers that according to the evidence provided by the Complainant, the affiliation with the Complainant and its trademark has been enhanced by the use of the disputed domain names, which cannot be considered a *bona fide* offering or any other legitimate use under the Policy. At least three of the disputed domain names (the First, Third and Fourth Disputed Domain Names) resolved to websites in Arabic language that purportedly sold a wide range of electrical goods, one of the fields where the Complainant operates under its VIRGIN MEGASTORE mark. These websites prominently displayed the Complainant's VIRGIN MEGASTORE Logo at the top (right or left) of each site, and in their copyright notices ("Virgin Megastore All Rights Reserved 2023 ©"), and tried to impersonate the Complainant or one of the Complainant's group businesses in their "Who we are" sections, "Customer service" and "Privacy Policy" pages with expressions such as "Virgin Megastore ('Virgin', 'we', 'us')". Furthermore, these websites reproduced substantial content of the Complainant's corporate website in their "Privacy policy" pages, purported to contain a live chat function redirected to WhatsApp contacts that displayed the Complainant's trademarks as their contact images, and contained not workable links and incomplete or false contact details. These circumstances meet all the factors to consider that the disputed domain names were used for an illegitimate business impersonating the Complainant or one of its group business and may probably be used for a phishing scam or any other type of fraud, which can never confer rights or legitimate interests on a respondent. See section 2.13 of the [WIPO Overview 3.0](#).

It is further remarkable that the Respondent has chosen not to reply to the Complaint, and, apparently, its reaction to the Complaint has been to stop using the disputed domain names, which can be interpreted as a self-admission of its lack of rights or legitimate interests in the disputed domain names.

The Panel, therefore, concludes that under the cumulative facts and circumstances of this case, the Complainant has established that the Respondent lacks any rights or legitimate interests in the disputed domain names. Therefore, the second element of the Policy under paragraph 4(a)(ii) has been established.

C. Registered and Used in Bad Faith

The Policy, paragraph 4(a)(iii), requires that the Complainant establish that the disputed domain names have been registered and are being used in bad faith.

The applicable standard of proof is, likewise, the "balance of probabilities" or "preponderance of the evidence", being the Panel prepared to draw certain inferences in light of the particular facts and circumstances of the case. See section 4.2, [WIPO Overview 3.0](#).

The Panel considers that the cumulative circumstances of this case point to bad faith registration and use of the disputed domain names.

The Complainant's trademarks are well known and internationally used, including in Saudi Arabia where the Respondent is located according to the Registrar verification of the disputed domain names. Furthermore, the VIRGIN and VIRGIN MEGASTORE marks have been extensively used for more than 40 years, and, particularly in the Middle East region, for more than 20 years, and have been extensively used over the Internet developing an internationally well known mark recognized in prior decisions under the Policy. Additionally, the Respondent apparently operates in the same field where the Complainant operates under its VIRGIN MEGASTORE mark, as the Respondent's websites under three of the disputed domain names purportedly commercialized a wide range of electrical goods and the Complainant commercializes these

same goods. It is therefore inconceivable to consider that the Respondent did not have knowledge of the Complainant's trademarks when it registered the disputed domain names.

Furthermore, the evidence provided by the Complainant regarding the use of three of the disputed domain names, corroborates that the Respondent targeted the Complainant and its trademarks when it registered and used the disputed domain names, prominently displaying the Complainant's registered VIRGIN MEGASTORES in the Respondent's websites and even reproducing substantial content of the Complainant's corporate websites.

The common, obvious, or intentional misspelling of the VIRGIN MEGASTORE mark in the Fifth Disputed Domain Name, and use of the gTLD ".shop" in all the disputed domain names further point to an intention in the Respondent to target the Complainant's trademarks, which are well known for retail services.

Therefore, on the balance of probabilities, taking into consideration the cumulative circumstances of this case, the Panel considers that the Respondent knew and targeted the Complainant's trademarks with the registration and use of the disputed domain names. The Respondent has acted in bad faith taking unfair advantage of the reputation of the VIRGIN and the VIRGING MEGASTORE marks, creating a false affiliation to these marks to increase the traffic of the Respondent's websites. The Panel finds that the Respondent had the intention to commercially benefit from this target to the Complainant's reputed trademarks, and may have also had the intention of obtaining sensible information from Internet users by impersonating the Complainant or one of the Complainant's group businesses, which constitutes bad faith under the Policy.

The current non-use of the disputed domain names would not change the Panel's finding on the Respondent's bad faith.

Accordingly, the Panel concludes that the Complainant has met its burden of establishing that the Respondent registered and is using the disputed domain names in bad faith under the third element of the Policy.

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 names <virginmegastore.shop>, <virginmegastore-sa.shop>, <virginmegastore-ksa.shop>, <virginmegastoree-ksa.shop>, and <virginmegastoree-sa.shop>, be transferred to the Complainant.

/Reyes Campello Estebaranz/

Reyes Campello Estebaranz

Sole Panelist

Date: March 24, 2023