

ADMINISTRATIVE PANEL DECISION

Virgin Enterprises Limited v. robtr towell, na
Case No. D2023-1821

1. The Parties

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

The Respondent is robtr towell, na, United States of America.

2. The Domain Name and Registrar

The disputed domain name <virginm-application.com> is registered with CNOBIN Information Technology Limited (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on April 24, 2023. On April 25, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 28, 2023, 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 (REDACTED FOR PRIVACY) and contact information in the Complaint. The Center sent an email communication to the Complainant on April 28, 2023 providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed an amended Complaint on May 3, 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 Respondent of the Complaint, and the proceedings commenced on May 9, 2023. In accordance with the Rules, paragraph 5, the due date for Response was May 29, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on May 30, 2023.

The Center appointed Delia-Mihaela Belciu as the sole panelist in this matter on June 2, 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

Virgin Enterprises Limited, the Complainant in the present proceedings, is a member of a group of companies collectively known as “the Virgin Group”.

The Virgin Group operates in a diverse range of sectors covering Financial Services, Health & Wellness, Music & Entertainment, People & Planet, Telecommunications & Media, Travel & Leisure, and space. According to the Complainant, there 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.

According to the Complainant, it has built up a considerable online presence and is the registered proprietor of over 5000 domain names consisting of or incorporating the VIRGIN mark. As per the Complainant’s assertions, it has operated a website at “www.virgin.com” since 2000 to promote the activities of the VIRGIN Group and its businesses, ventures, and foundations. The “www.virgin.com” website contains links to the specific web pages for most of the companies in the VIRGIN Group. Virgin Money is part of the Virgin Group of companies and provides financial services. The Complainant has a large portfolio of trademarks consisting of VIRGIN, in many countries and territories worldwide, including the following:

- International Trademark Registration for VIRGIN No. 1141309, registered on May 21, 2012, for goods and services in classes 09, 35, 36, 38, 41;
- Australian Trademark for VIRGIN MONEY No. 1482594, registered on March 28, 2012, for goods and services in classes 9 and 36;
- Australian Trademark for VIRGIN MONEY No. 1489037, registered on May 3, 2012, for goods and services in classes 9 and 36;
- International Trademark Registration for VIRGIN No. 1146047, registered on May 21, 2012, for goods and services in classes 09, 35, 36, 38, 41;
- UK Trademark for VIRGIN No. UK00003163121, registered on July 29, 2016, for goods and services in classes 03, 05, 09, 11, 12, 14, 16, 31, 32, 33, 35, 36, 38, 39, 41, 42, 43, 44, 45;
- UK Trademark for VIRGIN No. UK00915404841, registered on December 2, 2016, for goods and services in classes 03, 05, 09, 11, 12, 14, 16, 31, 32, 33, 35, 36, 38, 39, 41, 42, 43, 44, 45;
- UK Trademark for VIRGIN MONEY No. UK00002177329, registered on May 21, 1999, for services in class 36;
- UK Trademark for VIRGIN MONEY No. UK00914032247, registered on December 3, 2015, for goods and services in classes 09, 35, 36, 38, 42.

The disputed domain name was registered by the Respondent on January 20, 2023, and it is used in relation to email services.

5. Parties' Contentions

A. Complainant

The Complainant contends that the disputed domain name is confusingly similar to its VIRGIN trademarks as such is comprised of the terms "virgin", "m" and "application" with a hyphen separating the terms "m" and "application". In the Complainant's view, the disputed domain name incorporates in its entirety the trademark VIRGIN. The Complainant also contends that the initial component of the disputed domain name is identical to the entirety of the distinctive and dominant elements of its VIRGIN MONEY trademarks.

The Complainant further alleges that the second component of the disputed domain name "m" is the first letter of the word "money" and so could be perceived by consumers to indicate this term, being the second element of the Complainant's trademark VIRGIN MONEY. The letter "m" is also often understood in the context of online services to mean "mobile", being that a website or application is optimized for use on a mobile device, as per the allegations of the Complainant.

The Complainant asserts that the term "application" is the ordinary English word that means to file an official request to obtain or be accepted for something, for example to open a bank account or be issued a credit card, or that means a downloadable computer software program usually used on a mobile phone. Therefore, in the Complainant's view, Internet users and consumers are therefore very likely to understand the disputed domain name to signify the online location where it is possible to apply for Virgin branded services, in particular financial services provided by Virgin Money, and/or that that online location is a mobile app and/ or is optimized for use on a mobile device.

The Complainant contends that the additional components "m" and "application" in the disputed domain name are descriptive generic terms that are insufficient to distinguish the disputed domain name from the Complainant's registered trademarks. In the Complainant's view, the letter "m" could also be introduced into the disputed domain name by an Internet user mistyping the term "virgin" when searching for websites relating to the Virgin brand and online locations to apply for Virgin branded services.

For these reasons, the Complainant concludes that the disputed domain name is confusingly similar to its VIRGIN mark.

The Complainant further contends that the Respondent does not have any rights or legitimate interests in the disputed domain name for a number of reasons.

The Complainant notably asserts that the disputed domain name is being used as part of the email address (redacted)@virginm-application.com. This unauthorized email claims to be, as per the assertions of the Complainant, a "Confirmation & Payment Information" from the "Compliance Department" of Virgin Money Australia and uses marks identical to the Complainant's registered marks Virgin and Virgin Money. The Complainant further asserts that the name used to sign off the email is the name of an employee in a high-profile senior management role at Virgin Money Australia.

The Complainant underlines that neither the disputed domain name nor the unauthorized email address have been authorized by the Complainant or the Virgin Money Australia business, that the above described scam is illegal and carried out for illegitimate commercial gain. Therefore, the Complainant contends that the use of the disputed domain name cannot be considered to be legitimate or fair use of a domain name and that the use of the disputed domain name to conduct this scam demonstrates that the Respondent has no legitimate rights or interests in the disputed domain name.

The Complainant further contends that the disputed domain name was registered and is being used in bad faith for a number of reasons.

To this end, the Complainant argues that the disputed domain name is being used as part of the

unauthorized email address as part of the scam described above. The Complainant asserts that the scam is intended to defraud members of the public by deceiving them into depositing money with a business that claims to be Virgin Money Australia. In the Complainant's view, this activity is illegal and is carried out for illegitimate commercial gain.

The Complainant further alleges that the use of marks identical or highly similar to the Complainant's registered marks within the disputed domain name and emails sent using the unauthorized email address, mentioned above, is done to confuse Internet users into believing that the disputed domain name is, or is connected to, the Virgin Money Australia business and deceive them into depositing money.

In the Complainant's view, it is clear that by using the disputed domain name the Respondent has intentionally attempted to attract, for commercial gain, Internet users to the unauthorized email address, mentioned above, by creating a likelihood of confusion with the Complainant's registered marks as to the source, sponsorship, affiliation or endorsement of the unauthorized email address.

For all these reasons, the Complainant concludes that, the disputed domain name was registered and is being used in bad faith.

B. Respondent

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

6. Discussion and Findings

In order for the Complainant to succeed, such must prove, according to paragraph 4(a) of the Policy, that:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
- (ii) the Respondent has no rights or legitimate interests with respect to the disputed domain name; and
- (iii) the disputed domain name has been registered and is being used in bad faith.

In case all three elements above have been fulfilled, the Panel is able to grant the remedy requested by the Complainant. Thus, the Panel will deal with each of the requirements in turn.

A. Identical or Confusingly Similar

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

With respect to the requirement of having rights pursuant to paragraph 4(a)(i) of the Policy, the Complainant owns several VIRGIN registered trademarks, in several jurisdictions. Consequently, the Panel finds that this requirement is fulfilled.

With regard to the assessment of identity or confusing similarity of the disputed domain name with the VIRGIN trademarks, it is generally accepted that this involves a side-by-side comparison of the domain name and the textual components of the relevant trademark to assess whether the mark is recognizable within the disputed domain name. In cases 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 (see section 1.7 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

The Panel finds that the disputed domain name is confusingly similar to the VIRGIN trademarks as such incorporates the VIRGIN mark in its entirety and the addition of the letter “m” and of the word “application” with a hyphen separating the terms “m” and “application” does not avoid a finding of confusing similarity. The VIRGIN mark remains clearly recognizable within the disputed domain name (see section 1.8 of the [WIPO Overview 3.0](#)).

Previous UDRP panels have held that such additions do not avoid confusing similarity (see *Inter-IKEA Systems B. V. v. Evezon Co. Ltd.*, WIPO Case No. [D2000-0437](#); *The British Broadcasting Corporation v. Jaime Renteria*, WIPO Case No. [D2000-0050](#); *Volvo Trademark Holding AB v. SC-RAD Inc.*, WIPO Case No. [D2003-0601](#)).

In what concerns the addition of the generic Top-Level Domain “.com”, this is not to be taken into consideration when examining the confusing similarity between the Complainant’s trademarks and the disputed domain name, as such is viewed as a standard registration requirement and is disregarded under the first element confusing similarity test (see section 1.11 of the [WIPO Overview 3.0](#)).

The Panel therefore finds that the Complainant has satisfied paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

The Complainant is required to make out a *prima facie* case that the Respondent lacks rights or legitimate interests. Once such *prima facie* case is made out, the burden of production shifts to the Respondent to come forward with appropriate allegations or evidence demonstrating rights or legitimate interests in the disputed domain name. If the Respondent fails to come forward with such appropriate allegations or evidence, the Complainant is generally deemed to have satisfied paragraph 4(a)(ii) of the Policy (see section 2.1 of the [WIPO Overview 3.0](#)).

In this case, the Complainant has put forward a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name, which has not been rebutted by the Respondent, as the Respondent has not submitted any response.

Thus, based on the available evidence, the Respondent uses the disputed domain name as part of an email address which appear to correspond to a financial scam by which there are also several elements related to the Complainant’s businesses and VIRGIN trademarks in order to create confusion for Internet users. Moreover, the Respondent is not a licensee of, nor has any kind of relationship with the Complainant. The Complainant has never authorised the Respondent to make use of its VIRGIN trademarks in the disputed domain name.

Based on the evidence filed by the Complainant, the disputed domain name currently does not resolve to an active website.

The above does not amount to a *bona fide* offering of goods or services, or to a legitimate noncommercial or fair use of the disputed domain name.

The Panel therefore finds that the Complainant has satisfied paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

Under paragraph 4(a)(iii) of the Policy, a complainant must show that the domain name has been registered and is being used in bad faith.

In this case, the Complainant’s rights to the VIRGIN trademark predate the registration date of the disputed domain name.

The VIRGIN trademark is registered in several jurisdictions and enjoys of significant reputation recognized by earlier UDRP panels as well (see *Virgin Enterprises Limited v. Privacy Protection/ LLC Ruslan Khaziev*, WIPO Case No. [D2021-2597](#); and *Virgin Enterprises Limited v. Duygu Mert*, WIPO Case No. [D2011-0632](#)).

In light of the significant reputation of the VIRGIN trademarks, it is not conceivable that the Respondent chose the disputed domain name without knowledge of the Complainant's businesses and its VIRGIN trademarks, which support a finding of bad faith registration.

The Respondent's incorporation of the Complainant's VIRGIN trademark in its entirety in the disputed domain name and the use of the disputed domain name to send emails corresponding to a financial scam, misappropriating the name of an actual employee of the Complainant, relying also on several other elements related to the Complainant's business and VIRGIN trademarks, all support a finding of bad faith use (see [WIPO Overview 3.0](#), section 3.2.1).

For all these reasons, the Panel finds that the disputed domain name has been registered and is being used in bad faith, and that the third element of paragraph 4(a)(iii) of the Policy is fulfilled.

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, <virginm-application.com> be transferred to the Complainant.

/Delia-Mihaela Belciu/

Delia-Mihaela Belciu

Sole Panelist

Date: June 16, 2023