

ADMINISTRATIVE PANEL DECISION

Virgin Enterprises Limited v. Rafael Pearson, PearsonRacks / Adalee McClure, McClureBytes / Jasmine Blanchard, BlanchardRacks
Case No. D2023-2413

1. The Parties

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

Respondents are Rafael Pearson, PearsonRacks / Adalee McClure, McClureBytes / Jasmine Blanchard, BlanchardRacks, United States of America ("United States").

2. The Domain Names and Registrar

The disputed domain names <virgin-business-portal.com>, <virgin-business-support.com>, and <virgin-portal-business.com> are registered with Nicenic International Group Co., Limited (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on June 7, 2023. On June 7, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On June 8, 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 Respondent (REDACTED FOR PRIVACY) and contact information in the Complaint. The Center sent an email communication to Complainant on June 13, 2023, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint or to file a separate complaint for each of the disputed domain names. Complainant filed an amended Complaint on June 16, 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 Respondents of the Complaint, and the proceedings commenced on June 22, 2023. In accordance with the Rules, paragraph 5,

the due date for Response was July 12, 2023. Respondents did not submit any response. Accordingly, the Center notified Respondents' default on July 18, 2023.

The Center appointed Stephanie G. Hartung as the sole panelist in this matter on July 24, 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

Complainant is a company organized under the laws of the United Kingdom, that is active, *inter alia*, in the music and entertainment, media and travel as well as in the financial industry.

Complainant has provided evidence that it is the registered owner of numerous trademarks relating to its company name and brand VIRGIN, including, but not limited to the following:

- word mark VIRGIN, European Union Intellectual Property Office ("EUIPO"), registration number: 1141309, registration date: May 21, 2012, status: active;
- word/device mark VIRGIN, EUIPO, registration number: 1146047, registration date: May 21, 2012, status: active.

Moreover, Complainant has evidenced to own numerous domain names relating to its VIRGIN trademark, including since 2000 the domain name <virgin.com>, which resolves to Complainant's official website at "www.virgin.com", promoting Complainant's business, ventures, and foundations in various industries worldwide, as well as since 2002 the domain name <virginmoney.com>, which resolves to Complainant's further website at "www.virginmoney.com", which advertises financial services for businesses as well as copies of third-party articles reporting on Complainant's related activities.

Respondents, according to the disclosed Whois information for the disputed domain names, are residents of the United States who registered the disputed domain name <virgin-business-portal.com> on May 10, 2023, the disputed domain name <virgin-business-support.com> on May 4, 2023, as well as the disputed domain name <virgin-portal-business.com> on May 19, 2023. By the time of the rendering of this decision, the disputed domain names do not redirect to any content on the Internet. Complainant, however, has demonstrated that, at some point before the filing of the Complaint, all three disputed domain names resolved to identical websites which copied text, images, and layout of Complainant's website at "www.virginmoney.com", including Complainant's VIRGIN trademark and official logo, thereby deceiving Internet users into installing a certain software commonly used by scammers to get hold of personal and confidential information.

Complainant requests that the disputed domain names be transferred to Complainant.

5. Parties' Contentions

A. Complainant

Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain names.

Notably, Complainant contends that 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 in five continents, moreover, that, by virtue of consistent and intensive use, Complainant's VIRGIN trademark

as meanwhile acquired a significant reputation and goodwill in respect of e.g. financial and banking services for businesses and otherwise.

Complainant submits that the disputed domain names are confusingly similar to Complainant's VIRGIN trademark as they are all comprised of the terms "virgin" and "business" as well as either the term "portal" or "support". Moreover, Complainant asserts that Respondents have no rights or legitimate interests in respect of the disputed domain names since (1) Respondents have not been authorized by Complainant to use its VIRGIN trademark in connection with the disputed domain names, (2) Respondents have copied, without authorization, content, look and feel of Complainant's official website including Complainant's registered VIRGIN trademark, and (3) operating a website under the disputed domain names in such a way can neither be qualified as a *bona fide* offering of goods or services nor as a legitimate noncommercial or fair use. Finally, Complainant argues that Respondents have registered and are using the disputed domain names in bad faith since (1) the disputed domain names resolve to a website, which copies content, look and feel of Complainant's website at "www.virginmoney.com" and also reproduces Complainant's registered VIRGIN trademark without authorization to do so, and (2) the websites under the disputed domain names are being used or intended to be used to obtain sensitive personal details of members of the public for illegitimate commercial gain.

B. Respondents

Respondents did not reply to Complainant's contentions.

6. Discussion and Findings

Under paragraph 4(a) of the Policy, Complainant carries the burden of proving:

- (i) That the disputed domain names are identical or confusingly similar to a trademark or service mark in which Complainant has rights; and
- (ii) That Respondents have no rights or legitimate interests in respect of the disputed domain names; and
- (iii) That the disputed domain names have been registered and are being used in bad faith.

Respondents' default in the case at hand does not automatically result in a decision in favor of Complainant, however, paragraph 5(f) of the Rules provides that if Respondents do not submit a response, in the absence of exceptional circumstances, the Panel shall decide the dispute solely based upon the Complaint. Further, according to paragraph 14(b) of the Rules, the Panel may draw such inferences from Respondents' failure to submit a Response as it considers appropriate.

A. Consolidation due to multitude of Respondents and disputed domain names

As regards the multitude of three Respondents and three disputed domain names belonging to them, first it should be noted that there are various similarities in Respondents' Whois contact information (e.g. all three Whois entries show personal names which are also reflected in the name of the organization that comes with those personal names, though Complainant could find no record of any registered business thereunder; moreover, all three Respondents are allegedly located in residential locations in the United States, though some of the listed contact information, e.g. telephone numbers, are obviously fake). Second, it should be recognized that all three domain names belonging to these Respondents, at some point before the filing of the Complaint, resolved to an identical website and have been registered through the same Registrar as well as in a direct temporal link to one another. Therefore, it is reasonable to argue that the disputed domain names are subject to some kind of common control which is why it is also fair and equitable to all Parties that this Complaint is consolidated against multiple Respondents and disputed domain names at the same time (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.11.2).

B. Identical or Confusingly Similar

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between Complainant's VIRGIN trademark and the disputed domain name. [WIPO Overview 3.0](#), section 1.7.

Based on the available record, the Panel finds Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1

The Panel finds the entirety of Complainant's VIRGIN trademark is reproduced within the disputed domain names. Accordingly, the disputed domain names are confusingly similar to this trademark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

While the addition of other terms (here, "business", "portal" and/or "support") may bear on assessment of the second and third elements, the Panel finds the addition of such terms does not prevent a finding of confusing similarity between the disputed domain names and Complainant's VIRGIN trademark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

Based on the available record, the Panel finds the first element of the Policy has been established.

C. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances in which Respondent may demonstrate rights or legitimate interests in a disputed domain name.

While the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the often impossible task of "proving a negative", requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a *prima facie* case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

Having reviewed the record, the Panel finds Complainant has established a *prima facie* case that Respondents lack rights or legitimate interests in the disputed domain names. Respondents have not rebutted Complainant's *prima facie* showing and have not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain names.

The Panel considers that the record of this case reflects that:

- before any notice to Respondents of the dispute, Respondents did not use, nor have they made demonstrable preparations to use, the disputed domain names or a name corresponding to the disputed domain names in connection with a *bona fide* offering of goods or services. Paragraph 4(c)(i) of the Policy, and [WIPO Overview 3.0](#), section 2.2.
- Respondents (as an individual, business, or other organization) have not been commonly known by the disputed domain names. Paragraph 4(c)(ii) of the Policy, and [WIPO Overview 3.0](#), section 2.3.
- Respondents are not making a legitimate noncommercial or fair use of the disputed domain names, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue. Paragraph 4(c)(iii) of the Policy, and [WIPO Overview 3.0](#), section 2.4.
- the record contains no other factors demonstrating rights or legitimate interests of Respondents in the disputed domain names.

- Panels have 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, here deceiving Internet users into installing a certain software commonly used by scammers to get hold of personal and confidential information) can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

Based on the available record, the Panel finds the second element of the Policy has been established.

D. Registered and Used in Bad Faith

The Panel notes that for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular but without limitation, that if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

The Panel considers that the record of this case reflects that:

Respondents have intentionally attempted to attract, for commercial gain, Internet users to their website or other on-line location, by creating a likelihood of confusion with Complainant's VIRGIN trademark as to the source, sponsorship, affiliation, or endorsement of Respondents' website or location or of a product or service on Respondents' website or location. Paragraph 4(b)(iv) of the Policy, and [WIPO Overview 3.0](#), section 3.1.4.

Panels have 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, here deceiving Internet users into installing a certain software commonly used by scammers to get hold of personal and confidential information) constitutes bad faith. [WIPO Overview 3.0](#), section 3.4.

Having reviewed the record, the Panel finds Respondents' registration and use of the disputed domain names constitutes bad faith under the Policy.

Based on the available record, the Panel finds the third element of the Policy has been established.

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, <virgin-business-portal.com>, <virgin-business-support.com> as well as <virgin-portal-business.com> be transferred to Complainant.

/Stephanie G. Hartung/

Stephanie G. Hartung

Sole Panelist

Date: August 7, 2023