

## **ADMINISTRATIVE PANEL DECISION**

Virgin Enterprises Limited v. Avalynn Freeman, FreemanBytes /  
Sandra Contreras, ContrerasTech  
Case No. D2023-2564

### **1. The Parties**

The Complainant is Virgin Enterprises Limited, United Kingdom (“U.K.”), represented by AA Thornton IP LLP, U.K.

The Respondent is Avalynn Freeman, FreemanBytes, United States of America (“U.S.”) and Sandra Contreras, ContrerasTech, U.S.

### **2. The Domain Names and Registrars**

The disputed domain names <verify-virginmoney.com> and <virginmoneyau.com> (the “Disputed Domain Names”) 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 14, 2023. On the same day, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Names. On June 15, 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 the Complainant on June 16, 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 June 20, 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 June 22, 2023. In accordance with the Rules, paragraph 5,

the due date for Response was July 12, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on July 13, 2023.

The Center appointed Mariia Koval as the sole panelist in this matter on July 17, 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 a part of the Virgin Group, a British multinational venture capital conglomerate founded in 1970. The Complainant's business spans 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. The Complainant has over 50 million customers worldwide and employ more than 60,000 people across five business sectors and five continents.

Virgin Money U.K. is a part of the Virgin Group and provides financial services. Virgin Money U.K. operates around 74 branded stores and five customer lounges on high streets across the U.K. Since October 2018, Virgin Money has operated mobile application products and set up the Virgin Money Foundation as an independent charitable foundation. The Virgin Money U.K. business has won numerous awards in the field of financial and banking services.

Also, since 2003, Virgin Money Australia has offered a number of financial services including credit cards, superannuation, life insurance and home loans. Virgin Money Australia also offers a rewards scheme for customers whereby they can earn Virgin Money Points by spending and redeem them against a variety of rewards.

The Complainant is the owner of numerous VIRGIN and VIRGIN MONEY trademark registrations (collectively, the "VIRGIN MONEY Trademarks") around the world, among which are:

- European Union Trademark for VIRGIN, Registration No. 1141309, registered on May 21, 2012, in respect of goods and services in classes 9, 35, 36, 38, and 41;
- European Union Trademark Registration for VIRGIN, No. 1146047, registered on May 21, 2012, in respect of goods and services in classes 9, 35, 36, 38, and 41;
- U.K. Trademark Registration for VIRGIN MONEY, No. UK00914032247, registered on December 3, 2015, in respect of goods and services in class 9, 35, 36, 38, and 42;
- U.K. Trademark Registration for VIRGIN (figurative), No. UK00915404841, registered on December 2, 2016, in respect of goods and services in class 3, 5, 9, 11, 12, 14, 16, 31, 32, 33, 35, 36, 38, 41, 42, 43, 44, and 45.

The Complainant has built up a considerable online presence and is operating over 5,000 domain names consisting of or incorporating, among others, the VIRGIN MONEY Trademarks, in particular such as <uk.virginmoney.com> and <virginmoney.com.au>. The Complainant has operated its official website "www.virgin.com" since 2000 to promote the activities of the Virgin Group and its businesses, ventures and foundations. The Complainant operates pages on various social media platforms, in particular Instagram and Twitter, which collectively receive over 37 million views each year.

The Disputed Domain Name <verify-virginmoney.com> was registered on May 21, 2023, the Disputed Domain Name and <virginmoneyau.com> was registered on May 16, 2023. As at the date of this Decision, the Disputed Domain Names resolve to inactive websites. However, according to the evidence presented by the Complainant (Annexes 14 and 15), at the date the Complaint was filed the Disputed Domain Names

resolved to websites containing security messages to Internet users stating that the transactions (made in Manchester and Brisbane) are pending, and request the Internet users to verify their identity.

## 5. Parties' Contentions

### A. Complainant

The Complainant asserts that the Disputed Domain Names are confusingly similar to the Complainant's VIRGIN MONEY Trademarks. The term "verify" is incorporated as the first component of the Disputed Domain Name <verify-virginmoney.com>, separated by a hyphen, has no independent conceptual impression and will be perceived as a space between the terms that comprise this Disputed Domain Name. The term "verify" is the ordinary English language word meaning to check or prove something to be true. In the context of the financial services offered by the Complainant, this term would easily be understood to mean to authenticate a person's identity for the purpose of authorizing payments. The addition of the term "au" to the Disputed Domain Name <virginmoneyau.com>, which is the country code commonly used to refer to Australia, where the Complainant's VIRGIN MONEY Trademarks have a significant reputation for financial services, clearly indicates to Internet users that this Disputed Domain Name is the online location to access services provided by the Complainant to consumers in Australia.

The Complainant further contends that the Respondents have no rights or legitimate interests in respect of the Disputed Domain Names. Neither of the Disputed Domain Names have been authorized by the Complainant. There is no evidence that the Respondents have ever been commonly known by the Disputed Domain Names or term "Virgin Money", ever used or has plans to use the Disputed Domain Names in connection with a *bona fide* offering of goods or services. Given the fact that the Disputed Domain Names incorporate the Complainant's VIRGIN MONEY Trademarks in their entirety and the nature of the use of the Disputed Domain Names, it is hard to conceive of a legitimate use to which the Disputed Domain Names could be put.

The websites under the Disputed Domain Names are identical, both provide a security message to Internet users stating that transactions are pending and request the Internet user to verify their identity. It is clear that Internet users will be deceived into thinking that the Disputed Domain Names are operated by or connected to the Complainant. This deception is very likely to cause Internet users, including the Complainant's actual or prospective customers, to click on the "Verify" button and submit personal details using the online form on the websites under the Disputed Domain Names. The Complainant notes that the Disputed Domain Names are likely to be used for phishing purposes to obtain sensitive or personal information for fraudulent commercial gain. In the event any consumers suffer loss or harm as a result of submitting their personal details on the above websites, this will cause huge disruption to the Complainant and is also liable to tarnish the significant reputation in the Complainant's VIRGIN MONEY Trademarks.

The Complainant contends that the Respondents registered and is using the Disputed Domain Name in bad faith based on the following:

- the use of the Disputed Domain Names, namely, to resolve to the websites both of which reproduce the Complainant's VIRGIN MONEY Trademarks without authorisation, and purport to provide customer support services relating to the Complainant's business, is clearly done intentionally to deceive consumers into thinking the Disputed Domain Names are operated by or connected to the Complainant;
- the fact that Internet users will be unable to rely on the websites under the Disputed Domain Names to access the Complainant's banking services or customer support is likely to divert actual or prospective consumers away from the businesses of the Complainant, that will be hugely disruptive to the Complainant;

- it is likely the websites under the Disputed Domain Names are being used to obtain sensitive personal details of members of the public for illegitimate commercial gain. In the event any Internet users suffer harm or loss as a result of the scam being carried out using the Disputed Domain Names, this will cause further disruption to the Complainant;
- considering the clear bad faith nature of the use of the Disputed Domain Names, it is hard to conceive that the Disputed Domain Names might be put to use in good faith by the Respondent;
- considering the evidence of the significant reputation of the VIRGIN MONEY Trademarks in the U.K. and Australia, and the fact that the Respondent has copied the Complainant's Trademarks and the look and feel of the Complainant's website, and have obviously chosen to target U.K. and Australian Internet users, it is clear that the Respondent was aware of the Complainant and its business at the time of registering the Disputed Domain Names;
- it is clear that by using the Disputed Domain Names, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to the websites under the Disputed Domain Names, by creating a likelihood of confusion with the Complainant's VIRGIN MONEY Trademarks as to the source, sponsorship, or endorsement of the Disputed Domain Names.

## **B. Respondent**

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

## **6. Discussion and Findings**

### **6.1 Preliminary issues: Consolidation of the Respondents**

Paragraph 3(c) of the Rules states that a complaint may relate to more than one domain name, provided that the domain names are registered by the same domain name holder. The Complainant initiates disputes in relation to nominally different Disputed Domain Names registrants. The Complainant alleges that the Disputed Domain Names were registered by the same Registrar within five days of each other, further indicating that they are subject to common control and requests consolidation of the disputes against the Disputed Domain Names registrants pursuant to paragraph 10(e) of the Rules. The Disputed Domain Names registrants, if there are indeed more than one, did not comment on the Complainant's consolidation request.

In addressing the Complainant's request, the Panel will consider whether (i) the Disputed Domain Names or corresponding websites are subject to common control; and (ii) the consolidation would be fair and equitable to all Parties. See *Speedo Holdings B.V. v. Programmer, Miss Kathy Beckerson, John Smitt, Matthew Simmons*, WIPO Case No. [D2010-0281](#) and the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.11.2.

The Panel notes the following features of the Disputed Domain Names and arguments in favor of the consolidation: (i) the Disputed Domain Names were created within a very short period of five days; (ii) the Disputed Domain Names incorporate the Complainant's VIRGIN MONEY Trademarks in their entirety; (iii) the Disputed Domain Names refer directly to VIRGIN MONEY Trademarks in combination with a descriptive term or a term referring to a location; (iv) the Disputed Domain Names appear subject to common control intended for use in the same fraudulent scheme, resolving to almost identical sites; and (v) consolidation would be fair and equitable to all Parties. All the above, along with the fact that the named Respondents did not submit any arguments to rebut this inference is taken into account by the Panel.

With respect to fairness and equity, the Panel sees no reason the consolidation of the disputes would be unfair or inequitable to any Party.

Accordingly, the Panel decides to consolidate the disputes regarding the nominally different Dispute Domain Names registrants (referred to below as “the Respondent”) in a single proceeding.

## 6.2. Substantive Issues

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

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

### A. Identical or Confusingly Similar

The Complainant has properly confirmed its rights in the VIRGIN MONEY Trademarks due to the long use and significant number of registrations worldwide. The Panel notes that the registration of the Complainant’s VIRGIN MONEY Trademarks significantly predates the registration of the Disputed Domain Names.

The Disputed Domain Names completely reproduce the Complainant’s VIRGIN MONEY Trademarks in combination with the generic Top-Level domain (“gTLD”) “.com”. The Disputed Domain Name <verify-virginmoney.com> also includes the term “verify” and a hyphen; the Disputed Domain Name <virginmoneyau.com> includes the term “au”. According to the [WIPO Overview 3.0](#), section 1.8, where the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element. The addition of the terms “verify” and “au”, as well as a hyphen to the VIRGIN MONEY Trademarks does not prevent a finding of confusing similarity.

According to the [WIPO Overview 3.0](#), section 1.11, the applicable gTLD in a domain name (e.g., “.com”, “.club”, “.nyc”) is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test.

Pursuant to section 1.7 of the [WIPO Overview 3.0](#), in cases where a domain name incorporates the entirety of a trademark, the domain name will normally be considered identical or confusingly similar to that mark for purposes of UDRP standing.

Furthermore, the use of hyphens in the Disputed Domain Name is irrelevant in a finding of confusing similarity, see e.g. *Royale Indian Rail Tours Limited v. Divino Indian Memoirz Tours Pvt. Ltd.*, WIPO Case No. [D2010-2107](#) (“In the present case, the Panel finds that... adding a hyphen between the two words ‘maharaja’ and ‘express’ in the disputed domain name are insignificant modifications that do not reduce the confusing similarity between the disputed domain name and the Complainant’s mark”).

Accordingly, the Panel finds that the Disputed Domain Names are confusingly similar to the Complainant’s VIRGIN MONEY Trademarks pursuant to paragraph 4(a)(i) of the Policy.

### B. Rights or Legitimate Interests

The Complainant alleges that the Respondent has no rights or legitimate interests in the Disputed Domain Names, pursuant to paragraph 4(a)(ii) of the Policy. The Complainant has never authorized in any way or licensed the Respondent to use its VIRGIN MONEY Trademarks.

The Panel concludes that the Respondent lacks rights or legitimate interests in respect of the Disputed Domain Names.

The Panel finds that the Complainant has made a *prima facie* case. The Respondent registered the Disputed Domain Names more than ten years after the VIRGIN MONEY Trademarks had been registered. There is no evidence that the Respondent owns any “Virgin Money” or related trademark, nor that it is commonly known by the Disputed Domain Names. The Respondent did not reply to the Complainant’s contentions, therefore, the Respondent has failed to come forward with any evidence to rebut such *prima facie* case.

The Panel agrees that the Respondent is not making a legitimate noncommercial or fair use of the Disputed Domain Names. According to the evidence presented by the Complainant (Annexes 14 and 15) at the date of the filing of the Complaint, the Disputed Domain Names resolved to active websites containing security messages to Internet users; in particular the messages stated that the transactions made are pending and request the Internet user to verify their identity, allegedly to provide their personal information. Furthermore, the websites contained the Complainant’s logo without the Complainant’s authorization. Such use of the Disputed Domain Names obviously strengthens the false impression of an affiliation with the Complainant.

In accordance with the [WIPO Overview 3.0](#), section 2.5.1, even where a domain name consists of a trademark plus an additional term, UDRP panels have largely held that such composition cannot constitute fair use if it effectively impersonates or suggests sponsorship or endorsement by the trademark owner. The addition of the term “verify” to the Disputed Domain Name <verify-virginmoney.com>, which may be perceived as referring to a website where it is possible for the Complainant’s customers to confirm their identity to authorize payments; and the addition of the geographical term “au” to the Disputed Domain Name <virginmoneyau.com>, which is a country code for Australia, where the Complainant is actively operating, to the Complainant’s VIRGIN MONEY Trademarks in the Disputed Domain Names, are further evidence, that the Respondent was very well aware of the Complainant’s VIRGIN MONEY Trademarks and business at the time of registration of the Disputed Domain Names and has done so for the purpose of creating a clear impression that the Disputed Domain Names are connected with the Complainant’s Trademarks. Moreover, taking into account that the websites under the Disputed Domain Names asked to submit personal data of the Internet users, the Disputed Domain Names might be used for phishing purposes to obtain the users’ sensitive or personal information for fraudulent commercial gain.

The Respondent has not submitted any response and has not claimed any such rights or legitimate interests with respect to the Disputed Domain Names. Prior to the notice of the dispute, the Respondent did not demonstrate any use of the Disputed Domain Names or a trademark corresponding to the Disputed Domain Names in connection with a *bona fide* offering of goods or services.

In view of the foregoing, the Panel finds that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Names and that the Complainant succeeds under the second element of paragraph 4(a) of the Policy.

### **C. Registered and Used in Bad Faith**

Paragraph 4(b) of the Policy indicates some circumstances, 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:

- (i) circumstances indicating that [respondent has] 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) [respondent has] 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 [respondent has] engaged in a pattern of such conduct; or

- (iii) [respondent has] registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) by using the domain name, [respondent has] 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 [respondent's] website or location.

The Panel comes to the conclusion that the Disputed Domain Names were registered and are being used in bad faith in view of the following.

The Disputed Domain Names were registered in 2023, long after the Complainant registered its VIRGIN MONEY Trademarks. The Disputed Domain Names incorporate the Complainant's VIRGIN MONEY Trademarks in whole and redirected to the websites that creates a strong likelihood of confusion with the Complainant's VIRGIN MONEY Trademarks as to the source, sponsorship, affiliation, or endorsement of the Disputed Domain Names. The Internet users might have well been under the impression that they are websites created and operated by a certified service provider of the Complainant, which is not true. Moreover, such use of the Disputed Domain Names indicate that the Respondent was well aware of the Complainant's business and VIRGIN MONEY Trademarks when it registered the Disputed Domain Names.

The Respondent obviously chose to register the Disputed Domain Names, which are confusingly similar to the Complainant's VIRGIN MONEY Trademarks, for the purpose of attracting, for commercial gain, the Internet users to its websites by creating a likelihood of confusion with the Complainant's Trademark as to the source, sponsorship, affiliation, or endorsement of the Respondent's websites.

The Panel also agrees with the Complainant that it is very likely the websites under the Disputed Domain Names have been used to obtain sensitive personal details of Internet users for illegitimate commercial gain. In the event any Internet users suffer harm or loss as a result of the scam being carried out using the Disputed Domain Names, this will cause further disruption to the Complainant.

According to section 3.1.4 of the [WIPO Overview 3.0](#), UDRP panels have consistently found that the mere registration of a domain name that is identical or confusingly similar (particularly domain names comprising typos or incorporating the mark plus a descriptive term) to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith. The Panel is of the opinion that it is clear that the Respondent, having registered and used the Disputed Domain Names, which are confusingly similar to the Complainant's widely-known VIRGIN MONEY Trademarks, intended to disrupt the Complainant's business and confuse Internet users seeking for or expecting the Complainant. In view of the absence of any evidence to the contrary and that the Respondent did not file any response to claim otherwise, the Panel concludes that the Respondent has registered and is using the Disputed Domain Names in bad faith.

The fact that the Disputed Domain Names currently resolve to inactive sites has no relevance on the analysis nor outcome, in light of the circumstances. Moreover, the non-use of a domain name would not prevent a finding of bad faith under the doctrine of passive holding. See section 3.3 of the [WIPO Overview 3.0](#).

Finally, the Respondent, not participating in the proceeding, has failed to indicate any facts and/or evidence, which would show the good faith registration or use of the Disputed Domain Names.

In view of the foregoing, the Panel finds that the paragraph 4(a)(iii) of the Policy has been satisfied by the Complainant and accordingly, the Disputed Domain Names have been registered and are 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 Names, <verify-virginmoney.com> and <virginmoneyau.com> be transferred to the Complainant.

*/Mariia Koval/*

**Mariia Koval**

Sole Panelist

Date: July 31, 2023