

ADMINISTRATIVE PANEL DECISION

Virgin Enterprises Limited v. Alath Consult
Case No. D2023-2591

1. The Parties

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

The Respondent is Alath Consult, Canada

2. The Domain Name and Registrar

The disputed domain name <virginusahotels.com> is registered with Whogohost Limited (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 16, 2023. On June 16, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On June 20, 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 (Unknown) and contact information in the Complaint. The Center sent an email communication to the Complainant on July 18, 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 July 21, 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 July 27, 2023. In accordance with the Rules, paragraph 5, the due date for Response was August 16, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on August 25, 2023.

The Center appointed Erica Aoki as the sole panelist in this matter on September 18, 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 and is the owner of the VIRGIN brand and associated trademarks.

The VIRGIN brand was originally established by its founder and chairman, Sir Richard Branson, when he started a business selling popular music records by mail order under the Virgin name. Presently the VIRGIN branded businesses span 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.

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.

The Complainant owns a substantial portfolio of approximately 3,500 trademark applications and registrations in over 150 countries covering the majority of the 45 Nice classes of goods and services. In particular, the Complainant owns the following trademark registrations:

UK Registration No. 3163121 VIRGIN in classes 3, 5, 9, 11, 12, 14, 16, 31, 32, 33, 35, 36, 38, 39, 41, 42, 43, 44, and 45;

UK Registration No. 3423222 VIRGIN HOTELS in classes 41 and 43;

UK Registration No. 3423227 VIRGIN HOTELS (stylized mark) in classes 41 and 43;

US Registration No. 4865666 VIRGIN HOTELS in class 43;

US Registration No. 4865667 VIRGIN HOTELS (stylized mark) in class 43.

The disputed domain name was registered on June 1, 2023. At the time of filing the Complaint, the disputed domain name resolved to a website that copies the Complainant's website at "www.virgin.com" almost identically and has lifted various images and sections of text from the current and 2022 versions of the Complainant's website.

5. Parties' Contentions

A. Complainant

The Virgin Group launched Virgin Hotels in 2010 as a project aiming at providing a smarter alternative for travelers. The first Virgin Hotels location at the Old Dearborn Bank Building in downtown Chicago, United States of America, was announced in 2011 and opened on January 26, 2014, offering 250 guest rooms, 40 one-bedroom suites and two luxury penthouses.

Since then, further Virgin Hotels have opened in Dallas in December 2019, Nashville in July 2020, Las Vegas in March 2021, New Orleans, United States of America, in August 2021, and Edinburgh, United Kingdom in 2022. In 2023, Virgin Hotels opened a hotel in New York City, United States of America and is now taking reservations for its site in Glasgow, United Kingdom set to open later this year.

The Virgin Hotels business takes an innovative approach to its hotels, ensuring value for money while providing a more vibrant environment for hotel stays, through its custom designed rooms, in-hotel bar the Commons Club and its app Lucy that allows live chat with hotel concierge.

The Virgin Hotels business has won numerous awards, reviews, and 11 accolades for its services. Awards won recently include: 2023 Architectural Excellence Awards at the Scottish Property Awards - ICA Studio (Virgin Hotels Edinburgh); 2022 Readers' Choice Awards Top 25 Hotels in the South - Virgin Hotels New Orleans No.12 and Virgin Hotels Nashville No. 16; 2022 Readers' Choice Awards Top Hotels in Las Vegas - Virgin Hotels Las Vegas No. 7; 2022 Readers' Choice Awards Top Hotels in Chicago - Virgin Hotels Chicago No. 3; Smart Stars Award 2022 - Best Boutique/Lifestyle Hotel.

The Virgin Hotels business also operates dedicated social media feeds, copies of which are attached at Annex 10. The Complainant's registered marks are used prominently and consistently throughout the Virgin Hotels Website and Virgin Hotels social media feeds.

Accordingly, the Complainant's registered trademarks have acquired a significant reputation and goodwill in the United States of America and globally in respect to hotel services.

The Complainant contends that the disputed domain name is confusing similar to the Complainant's trademarks, that the Respondent has no rights or legitimate interests in respect of the disputed domain name, and 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

The Complainant is required to establish the requirements specified under paragraph 4(a) of the Policy:

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

A. Identical or Confusingly Similar

Based on the facts presented by the Complainant, this Panel finds that the Complainant has established its rights in the trademark VIRGIN through registration and use. The Panel finds that the disputed domain name is confusingly similar to the Complainant's registered trademark with the only difference being the term "usa" between the VIRGIN and the word "hotels" therefore incorporates the Complainant's registered marks VIRGIN and VIRGIN HOTELS in their entirety, and the verbal elements of the Complainant's registered trademark VIRGIN HOTELS (stylized mark) in their entirety, which does not avoid a finding of confusing similarity.

The Panel therefore finds that the disputed domain name is confusing similar to the Complainant's trademark.

B. Rights or Legitimate Interests

The Panel finds the following on record in this proceeding under the Policy:

The Respondent is in default and thus has made no affirmative attempt to show any rights or legitimate interests in the disputed domain name.

Paragraph 4(c) of the Policy indicates that a registrant may have a right or legitimate interest in a domain name if it uses the domain name in connection with a *bona fide* offering of goods or services prior to notice of the dispute. In this regard, the Respondent is in no way connected with the Complainant, has no authorization to use any of the Complainant's trademarks, and has made no *bona fide* use of the disputed domain name.

There is no evidence on record that the Respondent is or was commonly known by the disputed domain name as an individual, business, or other organization.

There is no evidence on record that the Respondent is making a legitimate noncommercial or fair use of the disputed domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the Complainant's trademark.

Furthermore, the Respondent's website provides the contact email address "...@virginusahotels.com" which are likely to be used for phishing, to obtain sensitive or personal information for fraudulent commercial gain and also provides the contact phone number "8004" that is not an actual phone number and has no connection to the Virgin Hotels business.

The Respondent's webpage has also a "Book Now" option that allows the website visitors to go through the steps of selecting a date and type of room but then resolves to the Virgin Hotels Website.

The footer of the Respondent's website prompts Internet users to enter their email address and zip code to "SIGN UP FOR NEWS & OFFERS". This function is likely to be used for phishing, to obtain sensitive or personal information for fraudulent commercial gain.

The Complainant contends that it is very clear that Internet users will be deceived into thinking that the disputed domain name is operated by or connected to the Complainant or the Virgin Hotels business and may try to contact the Virgin Hotels business using the email address or the phone number provided on the Respondent's website.

Also, the fact that the "Book Now" option on the Respondent's website resolves to the Virgin Hotels Website will exacerbate the confusion that will be caused on the part of Internet users and is likely to divert actual or prospective consumers away from the Complainant's or the Virgin Hotels businesses.

Thus, the Respondent has no rights or legitimate interests in respect of the disputed domain name.

The Panel therefore finds that the Complainant has established an un rebutted *prima facie* case that the Respondent has no rights or legitimate interests in the disputed domain name, under the Policy, paragraph 4(a)(ii).

C. Registered and Used in Bad Faith

The Complainant's trademark was registered well before the registration of the disputed domain name, and considering the reputation of the Complainant's trademark, it is most likely that the Respondent knew or should have known of the Complainant's VIRGIN trademark when registering the disputed domain name.

Furthermore, the Complainant's VIRGIN trademark is distinctive and unique to the Complainant. It is therefore beyond the realm of coincidence that the Respondent chose the disputed domain name without the intention of misleading third parties. Moreover, panels have consistently found that the mere registration of a domain name that is identical or confusingly similar to a famous or widely known trademark by an unaffiliated entity can by itself create a presumption of bad faith.

The disputed domain name resolves to a website that copies the Complainant's website almost identically and has lifted various images and sections of text from the current and 2022 versions of the Complainant's website. By using the disputed domain name, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of its website.

The Respondent's activity is liable to tarnish the significant reputation that exists in the Complainant's registered trademarks. This is no use of a domain name in good faith, and considering this use it is hard to conceive that the disputed domain name could be put to use in good faith.

It is clear that by using the disputed domain name the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website, by creating a likelihood of confusion with the Complainant's registered marks as to the source, sponsorship, affiliation, or endorsement.

Accordingly, and as also supported by the Panel's findings above under the second element of the Policy, the Panel finds that the Respondent has registered and is using the disputed domain name in bad faith under the Policy, paragraph 4(a)(iii).

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 <virginusahotels.com> be transferred to the Complainant.

/Erica Aoki/

Erica Aoki

Sole Panelist

Date: October 2, 2023