

ADMINISTRATIVE PANEL DECISION

Virgin Enterprises Limited v. MUSHI MOSES
Case No. D2023-3509

1. The Parties

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

The Respondent is MUSHI MOSES, South Africa.

2. The Domain Name and Registrar

The disputed domain name <virgincargoexpress.com> (the “Disputed Domain Name”) is registered with NameCheap, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on August 18, 2023. On August 18, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On the same date, 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 (Privacy service provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to the Complainant on August 22, 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 amendment to the Complaint on August 22, 2023.

The Center verified that the Complaint together with the amendment to the 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 August 29, 2023. In accordance with the Rules, paragraph 5, the due date for Response was September 18, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on September 26, 2023.

The Center appointed Flip Jan Claude Petillion as the sole panelist in this matter on October 4, 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, Virgin Enterprises Limited, is a British company mainly responsible for registering and managing the VIRGIN and VIRGIN ATLANTIC word marks and the VIRGIN figurative mark. The Complainant is part of the Virgin Group. The Virgin Group's operations span a diverse range of sectors including the transport sector. More specifically, the Virgin Group owns a cargo airline service business under the mark VIRGIN ATLANTIC.

The Complainant is the owner of numerous registered trademarks, including the following:

- VIRGIN, International word mark registered under No. 1290574 on February 3, 2015, in classes 39, 41, and 43.
- VIRGIN, European Union word mark, registered under No. 001798560 on June 5, 2002, in classes 9 and 39.
- VIRGIN ATLANTICS, European Union word mark, registered under No. 014030589 on October 12, 2015, in classes 9, 35, 39, 41, 43, and 44.

The Respondent registered the Disputed Domain Name on November 13, 2021. According to the Complainants' undated evidence, the Disputed Domain Name resolved to a web page appearing to offer transport services under the name "Virgin Cargo Express Co. Ltd". The Panel observes that the Disputed Domain Name currently resolves to an inactive web page.

5. Parties' Contentions

A. Complainant

The Complainant considers the Disputed Domain Name to be confusingly similar to a trademark in which it claims to have rights.

The Complainant further claims that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name. According to the Complainant, the Respondent is not making a legitimate noncommercial or fair use of the Disputed Domain Name.

Finally, the Complainant claims that the Disputed Domain Name was registered and is being used in bad faith. The Complainant claims the website linked to the Disputed Domain Name is created to deceive consumers into thinking that the Disputed Domain Name is operated by or connected to the Complainant and that it will divert consumers away from Complainant's business. According to the Complainant, it is highly unlikely that the Respondent was unaware of the Complainant given the high recognition and reputation of the Complainant's VIRGIN and VIRGIN ATLANTIC trademarks when it registered the Disputed Domain Name. The Complainant also claims that the Respondent registered and is using the Disputed Domain Name for fraudulent purposes and possible commercial gain.

B. Respondent

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

6. Discussion and Findings

Paragraph 15 of the Rules provides that the Panel is to decide the Complaint on the basis of the statements and documents submitted in accordance with the Policy, the Rules, and any rules and principles of law that it deems applicable.

The *onus* is on the Complainant to make out his case and it is apparent, both from the terms of the Policy and the decisions of past UDRP panels, that the Complainant must show that all three elements set out in paragraph 4(a) of the Policy have been established before any order can be made to transfer the Disputed Domain Name. As the UDRP proceedings are administrative, the standard of proof is the balance of probabilities.

Thus, for the Complainant to succeed it must prove, within the meaning of 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 in respect of the Disputed Domain Name; and
- (iii) the Disputed Domain Name has been registered and is being used in bad faith.

The Panel will therefore deal with each of these requirements.

A. Identical or Confusingly Similar

To prove this element, the Complainant must first establish that there is a trademark or service mark in which it has rights. The Complainant has clearly established that there are trademarks in which it has rights. The Complainant's VIRGIN and VIRGIN ATLANTIC trademarks have been registered and used in various countries in connection to the Virgin Group's transport business.

The Panel observes that the Disputed Domain Name incorporates the Complainant's VIRGIN trademark in its entirety, adding the words "cargo" and "express". 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 (see section 1.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)")). In the Panel's view, the addition of the words "cargo" and "express" does not prevent a finding of confusing similarity between the Disputed Domain Name and the VIRGIN trademark.

It is well established that the generic Top-Level Domain ("gTLD"), here ".com", may be disregarded when considering whether the Disputed Domain Name is confusingly similar to a trademark in which the Complainant has rights.

In light of the above, the Complainant succeeds on the first element of the Policy.

B. Rights or Legitimate Interests

Under paragraph 4(a)(ii) of the Policy, the Complainant has the burden of establishing that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name.

As established by previous UDRP panels, it is sufficient for the Complainant to make a *prima facie* showing that the Respondent has no rights or legitimate interests in the Disputed Domain Name in order to place the burden of production on the Respondent (see section 2.1 of the [WIPO Overview 3.0](#)).

The Panel observes that the Respondent does not appear to be commonly known by the Disputed Domain Name and that the Respondent does not seem to have acquired trademark or service mark rights (there being no Response or evidence of any such rights). According to the information provided by the Registrar, the Respondent is named "MUSHI MOSES". There are no indications that a connection between the Complainant and the Respondent exists.

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 (see section 2.5.1 of the [WIPO Overview 3.0](#)). The Disputed Domain Name incorporates the Complainant's VIRGIN mark in its entirety and simply adds the descriptive words "cargo" and "express". The Panel finds that this combination can easily be considered as referring to the Virgin Group (which the Complainant is part of) as it is active in the transport and air cargo sector. Therefore, the Panel finds that the Disputed Domain Name carries a risk of implied affiliation with the Complainant and cannot constitute fair use.

Beyond looking at the domain name(s) and the nature of any additional terms appended to it, UDRP panels assess whether the overall facts and circumstances of the case, such as the content of the website linked to the disputed domain name and the absence of a response, support a fair use or not (see sections 2.5.2 and 2.5.3 of the [WIPO Overview 3.0](#)).

According to the Complainant's undated evidence, the Disputed Domain Name referred to a website appearing to offer transport services and including the Complainant's VIRGIN word mark. Moreover, the Contact Us page of the website linked to the Disputed Domain Name mentioned a postal address relating to Virgin Atlantic Cargo which is part of the Complainant's Virgin Group. In the Panel's view, this does not amount to a legitimate noncommercial or fair use of the Disputed Domain Name.

The Panel observes that the Disputed Domain Name currently resolves to an inactive webpage. In the Panel's view, this does not amount to any legitimate noncommercial or fair use or use in connection with a *bona fide* offering of goods and services.

The Respondent had the opportunity to demonstrate rights or legitimate interests but did not do so. In the absence of a Response from the Respondent, the *prima facie* case established by the Complainant has not been rebutted.

Therefore, the Panel finds that the Complainant has established that the Respondent has no rights or legitimate interests in the Disputed Domain Name. In light of the above, the Complainant succeeds on the second element of the Policy.

C. Registered and Used in Bad Faith

The Complainant must prove on the balance of probabilities both that the Disputed Domain Name was registered in bad faith and that it is being used in bad faith (see section 4.2 of the [WIPO Overview 3.0](#) and, for example, *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#), and *Control Techniques Limited v. Lektronix Ltd*, WIPO Case No. [D2006-1052](#)).

Paragraph 4(b) of the Policy provides a non-exclusive list of factors, any one of which may demonstrate bad faith. Among these factors demonstrating bad faith registration and use is the use of a domain name to intentionally attempt to attract, for commercial gain, Internet users to a 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 the website or location or of a product or service on the website or location.

In the present case, the Panel finds that the Respondent must have been aware of the Complainant and its trademark rights when it registered the Disputed Domain Name:

- the Complainant's mark predates the registration of the Disputed Domain Name by more than 19 years;
- the Disputed Domain Name incorporates the Complainant's trademark in its entirety with the addition of descriptive words which are easily linked to the activities of the Complainant's group;
- the Complainant provided extensive evidence of the reputation of and investments in the VIRGIN mark;
- the website linked to the Disputed Domain Name appeared to offer services similar to or even competing with the transport services offered by the Complainant's group;
- the website linked to the Disputed Domain Name appeared to refer to a United States of America postal address of Virgin Atlantic Cargo, which is part of the Complainant's group.

In the Panel's view, the Respondent's awareness of the Complainant's trademark rights at the time of registration suggests bad faith (see *Red Bull GmbH v. Credit du Léman SA, Jean-Denis Deletraz*, WIPO Case No. [D2011-2209](#); *BellSouth Intellectual Property Corporation v. Serena, Axel*, WIPO Case No. [D2006-0007](#)).

As mentioned before, the Disputed Domain Name appeared to resolve to a website offering services similar to or even competing with services linked to the Complainant's trademarks. In the Panel's view, this indicates that the Respondent has intentionally attempted to attract Internet users to its website for commercial gain by creating a likelihood of confusion with the Complainant's trademark (see *Simyo GmbH v. Domain Privacy Service FBO Registrant / Ramazan Kayan*, WIPO Case No. [D2014-2227](#)).

The Complainant also indicates that the website mentioned email addresses linked to the Disputed Domain Name and a "Leave a message" form. In the circumstances of the present case, the Panel agrees with the Complainant that there is a risk of fraudulent use of the (personal) data of unsuspecting Internet users gathered through such email addresses and form.

Given the totality of the circumstances discussed above, the current state of the Disputed Domain Name referring to an inactive web page does not prevent a finding of bad faith under the doctrine of passive holding (see section 3.3 of the [WIPO Overview 3.0](#)).

Finally, by failing to respond to the Complaint, the Respondent did not take any initiative to contest the foregoing. Pursuant to paragraph 14 of the Rules, the Panel may draw the conclusions it considers appropriate.

Therefore, the Panel finds that, on the balance of probabilities, it is established that the Disputed Domain Name was registered and is being used in bad faith. In light of the above, the Complainant also succeeds on the third and last 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 Name <virgincargoexpress.com> be transferred to the Complainant.

/Flip Jan Claude Petillion/

Flip Jan Claude Petillion

Sole Panelist

Date: October 18, 2023