

ADMINISTRATIVE PANEL DECISION

Virgin Enterprises Limited v. Zain Ashfaq Ahmed, Zain Hosting
Case No. D2024-0203

1. The Parties

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

The Respondent is Zain Ashfaq Ahmed, Zain Hosting, Pakistan.

2. The Domain Name and Registrar

The disputed domain name <virginatlanticcourierservice.com> is registered with NameSilo, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on January 19, 2024. On January 19, 2024, 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 (PrivacyGuardian.org LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on January 22, 2024, 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 January 26, 2024.

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”).

On January 22, 2024, the Respondent sent an email communication to the Center, consenting to the transfer of the disputed domain name. On the same date, the Center sent an email communication to the parties inquiring on their interest in a possible settlement. On January 24, 2024, the Complainant replied to the Center, informing that it did not wish to pursue settlement discussions and requested the proceedings to continue.

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on January 26, 2024. In accordance with the Rules, paragraph 5, the due date for Response was February 15, 2024. The Respondent sent email communications to the Center on January 22, 26 and February 6, 2024.

The Center appointed Pablo A. Palazzi as the sole panelist in this matter on February 20, 2024. 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 employs more than 60,000 people across five business sectors and five continents.

In 1984, the Complainant launched its first passenger and cargo airlines under the brand "Virgin Atlantic" with the aim of providing a high quality and value for money service. The Complainant's Virgin Atlantic Cargo service began operating between London and New York, and currently offers daily cargo flights to India, China, Africa, the United States of America ("United States"), and the Caribbean, connecting more than 350 destinations worldwide. In partnership with Delta Cargo and Air France/KLM Cargo, the Complainant is a leading transatlantic air cargo service.

Also, the Complainant operates a state-of-the-art facility for processing and storing cargo shipments at London Heathrow Airport, which is the largest United Kingdom port by value of cargo passing through. The Complainant's airline services saw a growth of 40% in revenue to GBP 448 million for 2021 and transported 207 million tons of cargo in 2021.

The Complainant is the owner of numerous VIRGIN and VIRGIN ATLANTIC trademark registrations around many jurisdictions, among which are:

- European Union Trademark Registration for VIRGIN, No. 001798537, registered on June 5, 2002, in respect of goods and services in classes 9 and 39;
- United Kingdom Trademark Registration for VIRGIN, No. UK00915404841, registered on December 2, 2016, in respect of goods and services in classes 3, 5, 9, 11, 12, 14, 16, 31, 32, 33, 35, 36, 38, 39, 41, 42, 43, 44, and 45;
- United Kingdom Trademark Registration for VIRGIN ATLANTIC, No. UK00001287263, registered on April 3, 1992, in respect of services in class 39;
- European Union Trademark Registration for VIRGIN ATLANTIC, No. 014030589, registered on October 12, 2015, in respect of goods and services in classes 9, 35, 39, 41, 43, and 44.

The Complainant has built up a considerable online presence and is operating a number of domain names consisting of or incorporating, among others, the VIRGIN ATLANTIC Trademarks, in particular such as <virgin.com>, <virginatlantic.com>, and <virginatlanticcargo.com>. The Complainant has operated its official website "www.virgin.com" since 2000 to promote its activities..

The disputed domain name was registered on December 25, 2023.

The disputed domain name is currently not active and contains the following legend: “This Account has been suspended.” At the time of filing the Complaint, the disputed domain name resolved to a website that reproduced the Complainant’s trademarks without authorization, and purports to provide international cargo and courier services.

5. Parties’ Contentions

A. Complainant

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

Notably, the Complainant contends that:

- the disputed domain name is confusingly similar to its trademarks;
- the Respondent has no rights or legitimate interests in respect of the disputed domain name;
- the Respondent has registered and is using the disputed domain name in bad faith.

B. Respondent

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

However an email was sent on January 22, 2024 to the Center stating:

“Hello, Thank you for the contact and information, After careful review, we would like to clarify that we are a domain reseller, and the domain in question was registered by one of our customers. We acknowledge the nature of the uniform domain and are willing to cooperate in resolving this matter amicably. In light of the information provided, we confirm our willingness to transfer the domain to the complainant. Please guide us through the necessary steps and procedures to facilitate the transfer promptly. We aim to ensure a smooth resolution to this matter and appreciate your assistance in coordinating the transfer process.”

On the same date, the Complainant stated that it does not wish to pursue settlement.

6. Discussion and Findings

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

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 the Complainant’s trademark and the disputed domain name. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ([“WIPO Overview 3.0”](#)), section 1.7.

The 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 entirety of the mark is reproduced within the disputed domain name. Accordingly, the disputed domain name is identical to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Although the addition of other terms like “courier” or “service” 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 name and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

The Panel finds the first element of the Policy has been established.

B. Rights or Legitimate Interests

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

Although 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 difficult 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 (although the burden of proof always remains on the complainant). 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.

The Panel notes that the disputed domain name reproduces the Complainant’s trademark added by the terms “courier” and “service”, both generic terms related to the Complainant services. In addition, the disputed domain name resolved to a website allegedly offering logistics and cargo services, the same services provided by the Complainant. In view of all of these circumstances, the Panel finds that the Respondent is using the disputed domain name to impersonate the Complainant. Panels have held that the use of a domain name for illegal activity such as impersonation/passing off can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

The Panel finds the second element of the Policy has been established.

C. 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.

In the present case, the Panel notes that:

- The Complainant has been using the trademark VIRGIN ATLANTIC at least since 1984, and owns trademark registrations for the VIRGIN ATLANTIC mark since April 3, 1992, while the Respondent has registered the disputed domain name in December 2023.

The disputed domain name reproduces the Complainant’s VIRGIN ATLANTIC mark in its entirety added by the terms “courier” and “service”, directly associated with the Complainant’s services;

- At the time of filing the Complaint, the disputed domain name resolved to a website that reproduced the Complainant’s trademarks without authorization, and purported to provide international cargo and courier services, clearly intentionally done to deceive consumers into thinking that the disputed domain name was operated by or was connected to the Complainant.. This statement has not been rebutted by the Respondent .

In light of the above, the Panel finds that the Respondent was, most likely than not, aware of the Complainant's VIRGIN ATLANTIC mark and services at the time of the registration of the disputed domain name, which constitutes registration in bad faith ([WIPO Overview 3.0](#), section 3.2.2). Furthermore, the Respondent has used the disputed domain name to impersonate the Complainant and to attract Internet users to its own website by creating a likelihood of confusion with the Complainant's VIRGIN ATLANTIC trademarks.

Previous Panels have also held that the use of a domain name for illegal activity such as impersonation/passing off constitutes bad faith. [WIPO Overview 3.0](#), section 3.4. Having reviewed the record, the Panel finds the Respondent's registration and use of the disputed domain name constitutes bad faith under the Policy.

The Panel finds that the Complainant has established the third 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 <virginatlanticcourierservice.com> be transferred to the Complainant.

/Pablo A. Palazzi/

Pablo A. Palazzi

Sole Panelist

Date: March 6, 2024