

ADMINISTRATIVE PANEL DECISION

Virgin Enterprises Limited v. codecracker win, codecracker
Case No. D2024-0532

1. The Parties

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

The Respondent is codecracker win, codecracker, Thailand.

2. The Domain Names and Registrar

The disputed domain names, <virgin777.co>, and <virgin777.net>, are registered with Name.com, Inc. (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on February 5, 2024. On February 6, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On February 8, 2024, 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 (Domain Protection Services, Inc.) and contact information in the Complaint. The Center sent an email communication to the Complainant on February 9, 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 February 12, 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").

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on February 12, 2024. In accordance with the Rules, paragraph 5, the due date for Response was March 3, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on March 5, 2024.

The Center appointed Federica Togo as the sole panelist in this matter on March 11, 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

It results from the Complainant's undisputed allegations that it is part of the Virgin Group. 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. Since then, operations have grown significantly and now 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 is responsible for registering and maintaining registrations for trade marks containing the VIRGIN name and VIRGIN signature logo and licensing these rights to the VIRGIN businesses. In 2004 the Virgin Group launched an online gaming and gambling service provider, Virgin Games, which operates under the marks VIRGIN CASINO and VIRGIN GAMES. Virgin Games was later acquired by Gamesys Group and today Gamesys Group uses the VIRGIN CASINO and VIRGIN GAMES trade marks under license from the Complainant and operates the websites "www.virgingames.com" and "www.virgincasino.com".

The Complainant is the registered owner of several trademarks worldwide consisting of or containing VIRGIN, e.g. European Union Trade Mark Registration No. 015404841 VIRGIN (figurative) registered on December 02, 2016 for goods and services in classes 3, 5, 9, 11, 12, 14, 16, 31, 32, 33, 35, 36, 38, 39, 41, 42, 43, 44, 45; United Kingdom Trade Mark Registration No. UK00003163121 VIRGIN registered on July 29, 2016 in classes 3, 5, 9, 11, 12, 14, 16, 31, 32, 33, 35, 36, 38, 39, 41, 42, 43, 44, and 45.

In addition, the Complainant operates the website "www.virgin.com" to promote the activities of the VIRGIN Group and its businesses, ventures and foundations.

The disputed domain name <virgin777.co> was registered on January 14, 2024, the disputed domain name <virgin777.net> was registered on November 17, 2023. Furthermore, the undisputed evidence provided by the Complainant proves that the disputed domain name <virgin777.net> currently redirects to the disputed domain name <virgin777.co> which resolves to website that purport to offer online gaming, betting and casino services prominently displaying without authorization the Complainant's registered trademark.

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 names.

Notably, the Complainant contends that the disputed domain names are confusingly similar to the Complainant's trademark since they incorporate the Complainant's registered trademark VIRGIN entirely. They additionally incorporate the number "777" which is a number commonly associated with slot machines and is frequently used by online gaming and casino websites.

The Complainant further contends that the Respondent has no rights or legitimate interests in the disputed domain names. The disputed domain names resolves to website that purport to offer online gaming, betting and casino services prominently displaying without authorization the Complainant's registered trademark. In particular, the website invites users to apply for membership; to apply for membership it is necessary to provide a mobile phone number and bank account details. The Complainant has not authorized the

Respondent to use the Complainant's Registered Marks or to register the disputed domain names and the Complainant can find no other legitimate reason for use of marks identical to the Complainant's registered marks to offer online gaming and betting services, being services for which the Complainant's registered marks have a reputation. The registration of the disputed domain names containing, and use on the website of, marks identical to the Complainant's registered marks, which have a reputation for online gaming and betting, is done intentionally to mislead Internet users that the website is connected to or operated by the Virgin Games business and is therefore trustworthy.

Finally, the Complainant contends that the disputed domain names were registered and are being used in bad faith. According to the Complainant, it is inconceivable that the Respondent was unaware of the Virgin Games business or the Complainant's registered marks when registering the disputed domain names, given the significant reputation that existed in the Complainant's registered Marks at the time the disputed domain names were registered and that the website to which the disputed domain names resolve uses marks identical to the Complainant's registered marks. The use of the disputed domain names to resolve to the website allegedly offering online gaming and betting services, is clearly done intentionally to deceive consumers into thinking that the disputed domain names are operated by or connected to the Complainant and the Virgin Games business.

B. Respondent

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

6. Discussion and Findings

Paragraph 15(a) of the Rules instructs this Panel to "decide a complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable". Paragraph 4(a) of the Policy requires a complainant to prove each of the following three elements in order to obtain an order that each disputed domain name be transferred or cancelled:

- (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 proceed to analyze whether the three elements of paragraph 4(a) of the Policy are satisfied.

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 names. Accordingly, the disputed domain names are confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Although the addition of other terms (here, numerals "777") may bear on assessment of the second and third elements, the Panel finds the addition of such numerals does not prevent a finding of confusing similarity between the disputed domain names 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.

Having reviewed the available record, the Panel finds the Complainant has established a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain names. The Respondent has not rebutted the Complainant’s prima facie showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain names such as those enumerated in the Policy or otherwise.

Moreover, the Panel notes that the disputed domain names contains the Complainant’s registered and well-known trademark VIRGIN, and that more likely than not, this trademark is not a trademark that one would legitimately adopt as a domain name unless to suggest an affiliation with the Complainant. The Panel finds it most likely that the Respondent registered the disputed domain names with the intention to take advantage of the Complainant’s reputation by registering domain names containing the Complainant’s trademark with the intent to mislead Internet users.

This is also confirmed by the content of the website to which the disputed domain names resolve allegedly offering online that purport to offer online gaming, betting and casino services prominently displaying without authorization the Complainant’s registered trademark

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 shares the view of other UDRP panels and finds that the Complainant’s trademark VIRGIN is well known. Therefore, this Panel has no doubt that the Respondent positively knew or should have known the Complainant’s trademark when registering the disputed domain names. This is underlined by the fact that the disputed domain names are clearly constituted by the Complainant’s trademark followed by numerals “777”. 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, [WIPO Overview 3.0](#) section 3.1.4. The Panel shares this view.

Furthermore, the Panel notes that it results from the Complainant’s documented allegations that the disputed domain names resolve to a website displaying without authorization the Complainant’s registered trademark allegedly offering services similar to those offered under the Complainant’s registered trademark.

For the Panel, it is therefore evident that the Respondent positively knew the Complainant's mark. Consequently, and in the absence of any evidence to the contrary, the Panel is convinced that the Respondent also knew that the disputed domain names included the Complainant's trademark when it registered the disputed domain names, and that the Respondent used the disputed domain names in bad faith.

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 names, <virgin777.co>, and <virgin777.net>, be transferred to the Complainant.

/Federica Togo/

Federica Togo

Sole Panelist

Date: March 25, 2024