

## **ADMINISTRATIVE PANEL DECISION**

### Virgin Enterprises Limited v. eby bakas

### Case No. D2024-1041

#### **1. The Parties**

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

The Respondent is eby bakas, United Kingdom.

#### **2. The Domain Name and Registrar**

The disputed domain name <virginukhotels.com> is registered with 1API GmbH (the “Registrar”).

#### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on March 8, 2024. On March 11, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On March 12, 2024, 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 (Redacted for Privacy) and contact information in the Complaint. The Center sent an email communication to the Complainant on March 14, 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 amended Complaint on March 19, 2024.

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 March 20, 2024. In accordance with the Rules, paragraph 5, the due date for Response was April 9, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on April 12, 2024.

The Center appointed Dawn Osborne as the sole panelist in this matter on April 23, 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 part of the well known Virgin Group of companies owning the VIRGIN brand for many different types of services. The Complainant is also the owner of the VIRGIN HOTELS brand for hotel services registered, inter alia, as United Kingdom registration no. 3423222 in classes 41 and 43 since November 15, 2019, and United States of America registration no. 4865666 since December 8, 2015. It operates a web site at <virginhotels.com>.

The disputed domain name was registered in January 18, 2024 and has been used in relation to a fraudulent email employment scam asking for money. The disputed domain name resolves to a site that extensively copies a December 2022 version of the Complainant's Virgin Hotels website including text, images and footers and uses the Complainant's mark and logos to purport to be an official site of the Complainant offering hotel services. Once the user selects a hotel they are redirected to the Complainant's Virgin Hotels web site. The Respondent's web site gives an email address for contact purposes and provides a link for Internet users to sign up for offers with their email address and zip code thereby collecting personal details of Internet users.

The Complainant has linked the Whois details given by the Registrant for the disputed domain name to other domain names against which the Complainant has previously taken successful action under the UDRP.

#### **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 contains the Complainant's VIRGIN HOTELS mark only adding the descriptive indication "uk" and the generic Top-Level Domain .com which do not prevent confusing similarity between the disputed domain name and the Complainant's VIRGIN HOTELS mark.

The Respondent is not commonly known by the disputed domain name and is not authorised by the Complainant.

The use of the disputed domain name by the Respondent to host a copy of an old version of the Complainant's web site and in relation to a fraudulent scam is illegal. This is not a bona fide offering of goods or services or fair legitimate non commercial use and the Respondent has no rights or legitimate interest in the disputed domain name. The Respondent is confusing customers for commercial gain and disrupting the Complainant's business showing that the disputed domain name was registered and used in bad faith. Phishing is bad faith per se. The use of the material copied from an old version of the Complainant's web site and the Complainant's logos shows the Respondent has actual knowledge of the Complainant and its rights, business and services.

The Whois details given by the Respondent in relation to the disputed domain name can be linked to a number of other domain name registrations containing the Complainant's mark against which the Complainant has taken successful action under the UDRP showing the Respondent is engaged in a pattern of bad faith activity.

##### **B. Respondent**

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

## **6. Discussion and Findings**

### **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 Complainant's VIRGIN HOTELS mark is reproduced within the disputed domain name. Accordingly, the disputed domain name is 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, 'UK' may bear on assessment of the second and third elements, the Panel finds the addition of such term 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 Respondent is not authorised by the Complainant and there is no evidence that the Respondent is commonly known by the disputed domain name.

Having reviewed the available record, the Panel finds the Complainant has established a prima facie case that the Respondent has used the disputed domain name for a fraudulent email scam and to impersonate the Complainant's web site and that the Respondent lacks rights or legitimate interests in the disputed domain name. 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 name such as those enumerated in the Policy or otherwise.

Panels have held that the use of a domain name for illegal activity, here, phishing and 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**

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 Respondent has been linked to a series of cases in which the Complainant has taken successful action under the UDRP showing a pattern of bad faith activity.

The Respondent has also used the disputed domain name for a fraudulent email scam and to host an old version of the Complainant's web site, disrupting the Complainant's business with activity in competition with the Complainant's interests.

The prior involvement of the Respondent in UDRP cases involving the Complainant, and the use of the material copied from an old version of the Complainant's web site and the Complainant's logos on the Respondent's site all shows that the Respondent had actual knowledge of the Complainant and its rights, business and services. The hosting of the old version of the Complainant's web site is intentionally attempting to attract, for commercial gain, Internet users by creating a likelihood of confusion with the Complainant's mark.

Panels have held that the use of a domain name for illegal activity, here, claimed phishing and 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 <virginukhotels.com> be transferred to the Complainant.

*/Dawn Osborne/*

**Dawn Osborne**

Sole Panelist

Date: May 7, 2024