

## **ADMINISTRATIVE PANEL DECISION**

Virgin Enterprises Limited v. mega vergin store and Vergin Megastore  
Case No. D2024-2458

### **1. The Parties**

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

The Respondents are mega vergin store and Vergin Megastore, United Arab Emirates.

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

The disputed domain names <verginmegastore.online> and <verginmegastore.shop> are registered with Hostinger Operations, UAB (the "Registrar").

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on June 17, 2024. On June 17, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On June 18, 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 Respondents (Domain Admin and Privacy Protect, LLC (PrivacyProtect.org)) and contact information in the Complaint.

The Center sent an email communication to the Complainant on June 19, 2024, with the registrant and contact information of nominally multiple underlying registrants revealed by the Registrar, requesting the Complainant to either file separate complaint(s) for the disputed domain names associated with different underlying registrants or alternatively, demonstrate that the underlying registrants are in fact the same entity and/or that all domain names are under common control. The Complainant filed an amended Complaint on June 21, 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 Respondents of the Complaint, and the proceedings commenced on June 27, 2024. In accordance with the Rules, paragraph 5, the due date for Response was July 17, 2024. The Respondents did not submit any response. Accordingly, the Center notified the Respondents' default on July 30, 2024.

The Center appointed Mireille Buydens as the sole panelist in this matter on August 8, 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 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. Since then, operations have grown significantly. VIRGIN branded businesses span a diverse range of sectors: financial services, health and wellness, music and entertainment, people and planet, telecommunications, electronic goods 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 trademarks containing the VIRGIN name and the VIRGIN logo and licensing these rights to the VIRGIN businesses. 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. The registrations also concern the VIRGIN MEGASTORE trademark ("the Trademark").

The Complainant notably owns the following registrations for the Trademark:

- Kuwait registration No. 83425 for the Trademark VIRGIN MEGASTORE (word mark) registered on December 21, 2009 in class 35;
- Qatar registration No. 45641 for the Trademark VIRGIN MEGASTORE (word mark) registered on July 16, 2017. in class 35;
- Saudi Arabia Registration No. 767/33 for the Trademark VIRGIN MEGASTORE (word mark) registered on January 7, 2005 in class 35;
- United Arab Emirates Registration No. 102900 (UAE Application No. 111720) for the Trademark VIRGIN MEGASTORE (word mark) registered on April 5, 2010 in class 43;
- United Arab Emirates Registration No. 094646 for the Trademark VIRGIN MEGASTORE (word mark) registered April 28, 2009 in class 35

The Complainant has a considerable online presence and is the registered proprietor of over 5000 domain names consisting of or incorporating the VIRGIN Trademark. The Complainant operates a website at "www.virgin.com" since 2000 to promote the activities of the VIRGIN Group. The Complainant also operates a website under the domain name <virginmegastore.com>.

The Complainant operates retail shops under the Trademark VIRGIN MEGASTORE. The first Virgin Megastore was originally founded in 1976 in London. Throughout the 1980s and 1990s over 100 Virgin Megastore stores were opened around the world. The first United Arab Emirates based Virgin Megastore opened in 2001. Since then, 40 Virgin Megastores opened in the Middle East region with dedicated websites for, inter alia, the United Arab Emirates, which can be accessed via the website "www.virginmegastore.com/en/country-selector". The Virgin Megastore business retails a wide range of entertainment related items such as electronics, tech and gaming products, music and books, sports and lifestyle products, clothing, and toys in both physical Virgin Megastore branded stores and online. The services provided by the Virgin Megastore business are frequently discussed in third-party media, particularly

in Middle Eastern media. the twentieth anniversary of Virgin Megastore in the United Arab Emirates took place in 2021.

The disputed domain name <verginmegastore.shop> was registered on January 9, 2024 and <verginmegastore.online> on January 1, 2024.

According to the Complaint, the disputed domain name <verginmegastore.online> resolves to a website in Arabic offering for sale a variety of technology goods, including iPhones, PlayStations, Apple Watches, and Xbox gaming consoles. This website pretends to be owned by the “Jarir Bookstore Qatar” or “Jarir Company”, and appears on the Internet as a competitor of Virgin Megastore in Qatar.

According to the Complaint, the disputed domain name <verginmegastore.shop> resolved to a website in Arabic. The homepage of this website was identical to the “verginmegastore.online” website and also purported to sell electronic goods, including iPhones and gaming consoles.

At the date of this decision, both disputed domain names resolve to an error page.

## **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.

The Complainant first asserts that the disputed domain names are confusingly similar to the Trademark. The disputed domain names both include the terms “vergin” and “megastore”, plus a gTLD (“.online” and “.shop”). The disputed domain names therefore all include a term that is almost identical to the Complainant’s Trademark VIRGIN MEGASTORE. The visual difference between VIRGIN and “vergin” is minimal, namely one letter. Phonetically, VIRGIN and “vergin” are identical. It is likely that internet users will overlook the minor difference between VIRGIN and “vergin” and understand the disputed domain names to be VIRGIN MEGASTORE. The gTLD is irrelevant to the determination of confusing similarity under the UDRP since the TLD is a requirement of a domain registration. In the case at hand, the choice of the gTLD’s reinforce the confusion as the gTLD “.shop” is an ordinary English word referring to a place where goods are retailed for consumer purchase and the gTLD “.online” is the ordinary English word referring to something being available on the Internet.

Second, the Complainant asserts that the Respondent lacks rights or legitimate interests in the disputed domain names. The disputed domain names have not been authorised by the Complainant or the Virgin Megastore business. There is no reason for the Respondents to have chosen the disputed domain names other than to create confusion with the Complainant’s Trademark. Considering the content of the websites operated under the disputed domain names, selling similar products as the Virgin Megastores of the Complainant, and the inclusion of a term highly similar to the Complainant’s Trademark in the disputed domain names, it is clear that Internet users will be deceived into thinking that the disputed domain names are operated by or otherwise connected to the Complainant. Additionally, the websites operated under the disputed domain names identify themselves as owned by ‘Jarir Bookstore Qatar’ or ‘Jarir Company’, a direct competitor of the Virgin Megastore business. The Complainant further asserts that it is likely that the “Vergin Megastore” websites are being used for phishing purposes to obtain sensitive or personal information for fraudulent commercial via the ‘buy now’ buttons and form.

Third, the Complainant asserts that the disputed domain names were registered and are being used in bad faith. The Respondents knew or should have known of the Complainant's Trademark when registering the disputed domain names. Considering the significant reputation of the Virgin Megastore Trademarks, particularly in the Middle East, it is highly likely that the Respondents were aware of the Complainant and the Virgin Megastore business at the time of registering the disputed domain names. It is hard to conceive of a legitimate reason for the Respondents' choice of the disputed domain names other than to purposefully defraud Internet users by creating confusion with the Complainant's business. The Respondents deliberately attempted to make an association with the Complainant's business and Trademark to deceive Internet users into thinking the website under the disputed domain names are operated by or connected to the Complainant.

Further, the Complainant asserts that the Respondents use the disputed domain names with the intention to attract, for commercial gain, Internet users to its websites by creating a likelihood of confusion with the Complainant's Trademark as to the source, sponsorship, affiliation, or endorsement of its websites. The use of the term 'vergin' in the disputed domain names, that is highly similar to the Complainant's Trademark, is likely to deceive consumers into believing that the Complainant has invested in or is otherwise economically tied to the disputed domain names. This could divert consumers away from the business of the Complainant's Virgin Megastores and tarnish the reputation of the Trademark.

## **B. Respondents**

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

## **6. Discussion and Findings**

### **6.1 Consolidation**

The Complainant requests consolidation. Paragraph 10(e) of the UDRP Rules grants a panel the power to consolidate multiple domain name disputes. At the same time, paragraph 3(c) of the UDRP Rules provides that a complaint may relate to more than one domain name, provided that the domain names are registered by the same domain-name holder. However, the Panel does not consider that paragraph 3(c) of the Rules was intended to enable a single person or entity to put a complainant to the unnecessary time, expense, and effort of initiating multiple proceedings against technically different domain name registrants, particularly when each registration raises the same issues. In addressing the Complainant's request, the Panel will consider whether: (i) the disputed domain names or corresponding websites are subject to common control; and (ii) the consolidation would be fair and equitable to all Parties. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.11.2.

In the case at hand, the registrant's details for both the Respondents are highly similar: the postal address is the same, and the contact email address is also identical. The disputed domain names were also registered only eight days apart, with the same registrar. The disputed domain names resolved both to a website selling the same products and using the same lay-out. As a result, the Panel considers that they are subject to common control. Besides, not consolidating would imply unnecessary time, expense, and effort for the Complainant. Furthermore, the Respondents have not contested consolidation.

The Panel accepts the consolidation of the against the Respondents regarding the disputed domain names and will refer to "the Respondent".

## 6.2 Policy Requirements

Paragraph 4(a) of the Policy provides that Complainant prove each of the following three elements in order to succeed in its Complaint:

- (i) the disputed domain names are identical or confusingly similar to a trademarks or service marks in which the Complainant has rights;
- (ii) the Respondent has no rights or legitimate interests in respect of the disputed domain names;
- (iii) the disputed domain names were registered and are 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 3.0](#), section 1.7.

The Complainant has shown rights in respect of the Trademark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The Panel finds the Trademark is recognizable within the disputed domain names. The disputed domain names both include the term "verginmegastore", which is almost identical to the Complainant's Trademark VIRGIN MEGASTORE. The only difference between the Trademark and the disputed domain names is the fact that, in the word VIRGIN – which is the first part of the Trademark – the first "i" has been replaced by a "e", . The visual difference between the Trademark VIRGIN MEGASTORE and the disputed domain names is therefore minimal, namely one letter. Phonetically, VIRGIN and "vergin" are identical. A domain name which consists of a common, obvious, or intentional misspelling of a trademark is considered by panels to be confusingly similar to the relevant mark for purposes of the first element. [WIPO Overview 3.0](#), section 1.9

The gTLD (here ".online" and ".shop"), as a standard requirement of domain name registration, may be disregarded in the assessment of identity or confusing similarity.

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

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 Respondents lack rights or legitimate interests in the disputed domain names. The Respondents have not rebutted the Complainant's prima facie showing and have 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.

The Respondents are not licensed by or affiliated with the Complainant in any way. There is no evidence that the Respondents would be commonly known under the disputed domain names, nor is there any evidence of use or demonstrable plans to use the disputed domain names for a bona fide offering of goods or services. There is no evidence of legitimate noncommercial or fair use of the disputed domain names, either.

Considering the content of the websites operated under the disputed domain names, selling similar products as the Virgin Megastores of the Complainant, and the inclusion of a misspelling of the Complainant's Trademark in the disputed domain names, it is clear that Internet users will be deceived into thinking that the disputed domain names are operated by or otherwise connected to the Complainant. This confirms that there is no use, nor preparations to use, of the disputed domain names in connection with a bona fide offering of goods or services.

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 disputed domain names consist of the Complainant's Trademark VIRGIN MEGASTORE with only one difference, namely the replacement of the first letter "i" in VIRGIN by the letter "e" (both letters being in this case pronounced the same way), which amounts to typosquatting. The Trademark predates the registration of the disputed domain names. The Trademark is inter alia registered in the United Arab Emirates, where the Respondent is located. A quick VIRGIN and/or VIRGIN MEGASTORE trademark search, or even a Google search, would have revealed to the Respondent the existence of the Complainant and its Trademark, as well as its well-known character in the Middle East. As a result, the Panel finds that the Respondent was more likely than not aware of the Complainant's Trademark at the time of the registration of the disputed domain names ([WIPO Overview 3.0](#) section 3.1.4).

Paragraph 4(b) of the Policy considers that the domain name is used in bad faith when, by using the domain name, the respondent has intentionally attempted to attract, for commercial gain, Internet users to its website or other on-line location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of the respondent's website or location or of a product or service on the respondent's website or location. In the present case, the Panel notes that the disputed domain names which reproduce the Trademark with the mere replacement of the letter "i" in VIRGIN by the letter "e", combined with the gTLD ".online" and ".shop", falsely suggests that Internet users will find a website affiliated with the Complainant and selling online what the Complainant is offering in its physical shops in the Middle East. The Respondent has sought to create a misleading impression of association with the Complainant, which is a well-known company in (inter alia) the retail of electronic products. The Panel concludes that the Respondent intentionally attempted to attract, for commercial gain, Internet users by creating a likelihood of confusion with the Complainant's Trademark.

Furthermore, the failure of the Respondent to submit a response is further evidence of bad faith, given all the circumstances of the case. [WIPO Overview 3.0](#), section 3.2.

The disputed domain names currently resolve to an error page. Panels have found that the non-use of a domain name (including a blank or error page) would not prevent a finding of bad faith under the doctrine of passive holding. [WIPO Overview 3.0](#), section 3.3. Having reviewed the available record, the Panel notes the reputation of the Complainant's Trademark, and the composition of the disputed domain names, and finds that in the circumstances of this case the passive holding of the disputed domain names does not prevent a finding of 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 names <verginmegastore.online> and <verginmegastore.shop> be transferred to the Complainant.

*/Mireille Buydens/*

**Mireille Buydens**

Sole Panelist

Date: August 19, 2024