

ADMINISTRATIVE PANEL DECISION

Virgin Enterprises Limited v. Good Man, Goodmanway
Case No. D2024-2594

1. The Parties

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

The Respondent is good man, goodmanway, United States of America.

2. The Domain Name and Registrar

The disputed domain name <virgnin.com> is registered with PDR Ltd. d/b/a PublicDomainRegistry.com (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on June 25, 2024. On June 26, 2024, the Center transmitted by e-mail to the Registrar a request for registrar verification in connection with the disputed domain name. On June 27, 2024, the Registrar transmitted by e-mail to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details.

The Center verified that 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 July 4, 2024. In accordance with the Rules, paragraph 5, the due date for Response was July 24, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on July 30, 2024.

The Center appointed Gilberto Martins de Almeida as the sole panelist in this matter on August 16, 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 acts in a diverse range of businesses such as financial services, health and wellness, music and entertainment, people and planet, telecommunications and media, travel and leisure, and space. The Complainant was incorporated on September 27, 1972, and has, since then, established a well-known reputation.

Regarding the relevant trademarks, the Complainant proved to be the owner of the trademark VIRGIN at Annex 4 to the Complaint, in the following categories and jurisdictions:

- European Union Trade Mark Registration No. 017999595 for the mark VIRGIN in classes 1, 4, 7, 10, 15, 18, 20, 21, 24, 25, 27, 28, 29, 30 and 34, filed December 2018 and registered on August 30, 2019.
- International Trademark Registration No. 1141309 designating Australia, Bahrain, Egypt, the European Union, Morocco, Oman, Russian Federation, Ukraine and the United States of America for the mark VIRGIN in classes 9, 35, 36, 38 and 41 filed, May 21, 2012.
- United Kingdom Trademark Registration No. UK00003163121 for the mark VIRGIN in classes 3, 5, 9, 11, 12, 14, 16, 31, 32, 33, 35, 36, 38, 39, 41, 42, 43, 44 and 45, filed May 5, 2016 and registered on July 29, 2016.

As for the Complainant's operating domain, <virgin.com>, it was registered on September 10, 1997.

Finally, the disputed domain name has been registered on May 30, 2024, as proved by the Registrar and the Annex 1 to the Complaint. Currently and since its registration by the Respondent, the disputed domain name does not host any operating website, according to the Internet Archive's Wayback Machine. The Complainant submitted evidence showing that the disputed domain name was used to send e-mails impersonating the Complainant.

Given the information available about the Respondent and its default before the Center, it was not possible to obtain any further information about the Respondent's past or current activities.

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, besides the aforementioned facts, the Complainant contends that the disputed domain name is confusingly similar to the Complainant's trademark, that the Respondent has no rights or legitimate interests in respect of the disputed domain name and that it is registered and is being used in bad faith.

According to the Complainant, the addition of a letter "n" as the fifth letter in the expression "virgin", resulting in the expression "virgnin" is a misspelling of its trademark, therefore confusingly similar for the purposes of the Policy.

Supporting this Complaint, the Complainant states that the disputed domain name was used, since the day of its registration, as means to successfully carry out a financial scam against the Complainant, thus in bad faith. According to e-mails submitted by the Complainant at Annex 9 to the Complaint, the Respondent, sent an e-mail under the disputed domain name falsely using the name of a real Complainant's employee in order to conduct and achieve a financial scam. Still according to the Complainant, the similarity of the disputed domain name is such that its employees were not able to notice the false e-mail and were victims of the scam.

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, as proven by Annex 4 to the Complaint. [WIPO Overview 3.0](#), section 1.2.1.

The Panel finds the mark is recognizable within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the Complainant's previously owned mark for the purposes of the Policy. [WIPO Overview 3.0](#), sections 1.7 and section 1.9. The only difference between the disputed domain name and such Complainant's trademark is the aforementioned additional letter "n", which does not prevent a finding of confusing similarity.

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 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 claimed can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1. In fact, the Complainant proved, at Annex 9 to the Complaint, that the Respondent used the domain name to carry out a financial scam by e-mail, ordering payments to the Complainant's employees, impersonating one of them.

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 Respondent was in bad faith when registering and using the disputed domain name,

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, but other circumstances may be relevant in assessing whether a respondent's registration and use of a domain name is in bad faith. [WIPO Overview 3.0](#), section 3.2.1. In fact, the Respondent was aware of the Complainant and its trademarks, given that he used the disputed domain name under the name of a real employee of the Complainant to carry out the aforementioned scam. By doing so, the case in question falls under paragraph 4(b)(iv) of the Policy.

Panels have held that the use of a domain name for illegal activity as applicable to this case: fraudulent emails and impersonation constitute 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 <virgnin.com> be transferred to the Complainant.

/Gilberto Martins de Almeida/
Gilberto Martins de Almeida
Sole Panelist
Date: August 30, 2024