

ADMINISTRATIVE PANEL DECISION

Virgin Enterprises Limited v. james mensahs
Case No. D2024-2642

1. The Parties

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

The Respondent is james mensahs, India.

2. The Domain Name and Registrar

The disputed domain name <virgin-hotel.com> (“Disputed Domain Name”) is registered with Hosting Concepts B.V. d/b/a Registrar.eu. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 27, 2024. On June 28, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On July 1, 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, Whois Privacy Protection Foundation) and contact information in the Complaint. The Center sent an email communication to the Complainant on July 2, 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 July 4, 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 July 15, 2024. In accordance with the Rules, paragraph 5, the due date for Response was August 4, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on August 9, 2024.

The Center appointed Christos A. Theodoulou as the sole panelist in this matter on August 14, 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, Virgin Enterprises Limited, is a company incorporated under the Company Registration No. 01073929 under the laws of England and Wales. The Complainant is part of the Virgin Group and is the owner of the VIRGIN brand and associated trademarks. The 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. According to the Complainant, 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.

According to information provided by the Complainant and not refuted by the Respondent, the Complainant has, in particular, been active also in the field of accommodation, having launched the Virgin Hotels business in 2010 and having grown it ever since to several hotels, mainly in the United States of America ("US") and the United Kingdom. The business operates under the website <virginhotels.com>, which is accessible all around the world, and has won a series of important awards in its field of activity. It is, thus, claimed by the Complainant that, the Virgin Hotels business has acquired significant reputation and goodwill in the marketplace.

The Complainant states that is responsible for registering and maintaining registrations for trademarks containing the VIRGIN name and VIRGIN signature logo and licensing these rights to the VIRGIN businesses. Also, the Complainant claims to be the owner of 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 Complainant's trademarks include:

- (i) United Kingdom Trademark Registration No. UK00003163121, VIRGIN, registered on July 29, 2016;
- (ii) United Kingdom Trademark Registration No. UK00003423222, VIRGIN HOTELS, registered on November 15, 2019;
- (iii) US Trademark Registration No. 4865666, VIRGIN HOTELS, registered on December 8, 2015;
- (iv) United Kingdom Trademark Registration No. UK00915404841, VIRGIN (Logo), registered on December 2, 2016;
- (v) US Trademark Registration No. 4865665, VIRGIN (Logo), registered on December 8, 2015;
- (vi) United Kingdom Trademark Registration No. UK00003423227, VIRGIN HOTELS (Logo), registered on November 15, 2019.

Furthermore, the Complainant also owns and uses domain names consisting of or incorporating the VIRGIN mark. The Complainant claims that it has operated a website at "www.virgin.com" since 2000. The "virgin.com" website contains links to the specific web pages for most of the companies in the VIRGIN Group. In addition, the Complainant has registered and used, at least for the past fourteen years or so, the domain name <virginhotels.com>, which is admittedly quite similar to the Disputed Domain Name.

The Disputed Domain Name <virgin-hotel.com> was registered on May 22, 2024, by the Respondent, and does not resolve to an active webpage. The Complainant submitted evidence showing that the Disputed Domain Name was used to send email communications to third parties impersonating the Complainant and purporting to offer employment.

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 identical or confusingly similar to the trademarks in which the Complainant has rights, that the Respondent lacks any rights or legitimate interests in respect of the Disputed Domain Name and that the Respondent's fraudulent use of the Disputed Domain Name amounts to bad faith.

The Complainant states that the Disputed Domain Name is comprised of the terms "virgin" and "hotel" separated by a hyphen and thus incorporates the Complainant's Registered Mark VIRGIN in its entirety. It is mentioned by the Complainant that the Disputed Domain Name also incorporates the entirety of the distinctive verbal element of the Complainant's Registered Marks Virgin Logo and also almost the entirety of the distinctive verbal element of the Complainant's Registered Mark Virgin Hotels Logo.

Moreover, the Complainant contends that the Disputed Domain Name does not resolve to an active webpage. The Complainant alleges that the Respondent has no rights or legitimate interests in the Disputed Domain Name, as the Disputed Domain Name is being used to carry out fraudulent activity by sending emails to a third party posing as recruiters for the Virgin Hotels business and purporting to offer employment.

The Complainant further asserts that the Respondent intentionally attempted to attract for commercial gain Internet users and the recipients of its communications to communicate with the email address connected to the Disputed Domain Name, by creating a likelihood of confusion with the Complainant's registered marks.

The Complainant further states that there is no indication that the Respondent has ever used or plans to use the Disputed Domain Name in connection with a bona fide offering of goods and services.

Lastly, according to the Complainant, the use of the trademark and signature logo VIRGIN HOTELS in the Disputed Domain Name will be disruptive to the Complainant's business and to the Virgin Hotels business, if any members of the public suffer loss or harm and as a result, the reputation of the Complainant will be tarnished.

B. Respondent

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

6. Discussion and Findings

The Panel shall now proceed to the analysis of the evidence in this case, and shall decide if the Complainant has satisfied the three elements of paragraph 4(a) of the Policy.

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 presented evidence to demonstrate that it owns registered trademark rights to VIRGIN and to VIRGIN HOTELS. Therefore, 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 above marks are recognizable within the Disputed Domain Name. Accordingly, the Disputed Domain Name is confusingly similar to the marks for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7. The mere fact that the Respondent has omitted the letter "s" at the end of the Complainant's VIRGIN HOTELS trademark does not prevent a finding of confusing similarity. The marks of the Complainant remain recognizable in the Disputed Domain Name, and, this is by itself sufficient to establish the criterion of confusing similarity for purposes of the Policy, as many previous UDRP panels have found. [WIPO Overview 3.0](#), section 1.8.

In view of the above, the Panel finds that the Complainant has discharged its burden of proof on this point and holds that the Disputed Domain Name is confusingly similar to the Complainant's trademark VIRGIN HOTELS for the purposes of the Policy.

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.

In particular, the Panel finds that the Respondent has not used the Disputed Domain Name (or has made demonstrable plans for such use) with a bona fide offering of goods or services; that the Respondent is not commonly known by the Disputed Domain Name; and that the Respondent has not made legitimate noncommercial or fair use of the Disputed Domain Name.

Panels have held that the use of a domain name for illegal activity such as phishing, distributing malware, impersonation/passing off, or other types of fraud – here claimed as applicable to this case – can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

As a conclusion on this point, the Panel finds the second element of the Policy has been established and that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name and has thus satisfied paragraph 4(a)(ii) of the Policy.

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 Name has only been registered since May 22, 2024, while the Complainant's marks had been registered many years earlier. The Complainant has also demonstrated that the VIRGIN businesses operated pages in various social media platforms where the Complainant's marks are also featured prominently and are well-known globally. From the case record at hand, the Panel thus finds that the Respondent, when registering the Disputed Domain Name, was well aware of the Complainant's trademarks. Therefore, the Respondent's awareness of the Complainant's trademark rights at the time of registration suggests bad faith (See *Nintendo of America Inc v. Marco Beijen, Beijen Consulting, Pokemon Fan Clubs Org., and Pokemon Fans Unite*, WIPO Case No. [D2001-1070](#), *BellSouth Intellectual Property Corporation v. Serena, Axel*, WIPO Case No. [D2006-0007](#), *Red Bull GmbH v. Credit du Léman SA, Jean-Denis Deletraz*, WIPO Case No. [D2011-2209](#)).

Further, the Panel finds that the Respondent has shown a bad faith conduct. The fact that the Respondent sent communications from an email address connected to the Disputed Domain Name to a third party posing as recruiters for the Virgin Hotels business and purporting to offer employment; sent an 'Employment Application Form', requested personal information such as a name, address and telephone number, proof or right to work; requested for a passport, birth certificate, identity card or travel documents; included the Complainant's registered marks to emails, referenced to the Virgin Hotels New York Location, and referenced to other Virgin companies owned by the Complainant; all these constitute bad faith in the eyes of the Panel.

Panels have held that the use of a domain name for illegal activity here, claimed as applicable to this case: sale of counterfeit goods or illegal pharmaceuticals, phishing, distributing malware, unauthorized account access/hacking, impersonation/passing off, or other types of fraud 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.

As a consequence of the above, the Panel finds that the Respondent has registered and is using the Disputed Domain Name in bad faith, thus 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 <virgin-hotel.com> be transferred to the Complainant.

/Christos A. Theodoulou/

Christos A. Theodoulou

Sole Panelist

Date: August 26, 2024