

ADMINISTRATIVE PANEL DECISION

Virgin Enterprises Limited v. Irina Zenenkova
Case No. D2023-3368

1. The Parties

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

Respondent is Irina Zenenkova, Kazakhstan.

2. The Domain Names and Registrar

The disputed domain names <thevirgincasino.com> and <vir-gin.casino> are registered with NameCheap, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on August 4, 2023. On August 4, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names.

On August 7, 2023, 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 (Privacy service provided by Withheld) and contact information in the Complaint. The Center sent an email communication to Complainant on August 8, 2023, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint.

On August 9, Complainant requested that the UDRP proceedings under case numbers WIPO Case No. [D2023-3368](#) and WIPO Case No. [D2023-3367](#) are consolidated into UDRP proceeding under WIPO Case No. [D2023-3368](#). Complainant filed a Consolidated Amended Complaint on August 16, 2023.

The Center verified that the Complaint together with the Consolidated 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 Respondent of the Complaint, and the proceedings commenced on August 23, 2023. In accordance with the Rules, paragraph 5, the due

date for Response was September 12, 2023. Respondent did not submit any response. Accordingly, the Center notified Respondent's default on September 18, 2023.

The Center appointed Stephanie G. Hartung as the sole panelist in this matter on September 25, 2023. 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

Complainant is a company organized under the laws of the United Kingdom, that is active, *inter alia*, in the music and entertainment (including online gaming and online gambling), media and travel as well as in the financial industry.

Complainant has provided evidence that it is the registered owner of numerous trademarks relating to its company name and brand VIRGIN, including, but not limited to the following:

- word/device mark VIRGIN, European Union Intellectual Property Office (EUIPO), registration number: 015415061, registration date: September 26, 2016, status: active;
- word mark VIRGIN CASINO, United States Patent and Trademark Office (USPTO), registration number: 4951766, registration date: May 3, 2016, status: active.

Moreover, Complainant has evidenced to own numerous domain names relating to its VIRGIN and VIRGIN CASINO trademarks, including since 2000 the domain name <virgin.com>, which resolves to Complainant's official website at "www.virgin.com", promoting Complainant's business, ventures, and foundations in various industries worldwide, as well as since 1998 the domain name <virgincasino.com>, which resolves to Complainant's further website at "www.virgincasino.com", promoting Complainant's services particularly in the online casino industry.

Respondent, according to the disclosed Whois information for the disputed domain names, is a resident of Kazakhstan who registered the disputed domain name <thevirgincasino.com> on May 24, 2023, and the disputed domain name <vir-gin.casino> on May 22, 2023. By the time of the rendering of this decision, the disputed domain names do not resolve to any content on the Internet. Complainant, however, has demonstrated that, at some point before the filing of the Complaint, both disputed domain names resolved to similar websites purporting to offer online casino/online gambling services, thereby prominently displaying Complainant's VIRGIN and VIRGIN CASINO trademarks and official logos without any authorization to do so, and also redirecting to third-party websites, including Complainant's competitors in the online gaming and online gambling industry.

Complainant requests that the disputed domain names be transferred to Complainant.

5. Parties' Contentions

A. Complainant

Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain names.

Notably, Complainant contends that 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 in five continents, moreover, that, by virtue of consistent and intensive use, Complainant's VIRGIN and VIRGIN CASINO trademarks have meanwhile acquired a significant reputation and goodwill in respect of e.g. online gaming and online gambling services.

Complainant submits that the disputed domain names are confusingly similar to Complainant's VIRGIN and VIRGIN CASINO trademarks as they both incorporate the latter in their entirety. Moreover, Complainant asserts that Respondent has no rights or legitimate interests in respect of the disputed domain names since (1) Respondent uses Complainant's VIRGIN and VIRGIN CASINO trademarks and official logos on the websites under the disputed domain names without any authorization to do so, which constitutes an infringement of Complainant's registered trademark rights, and (2) the way in which Respondent uses the disputed domain names will confuse Internet users searching for, and possibly divert prospective consumers away from, Complainant's genuine services, will be a frustrating experience for those consumers and will create a negative perception of Complainant's online gaming and online gambling services, which could then tarnish the reputation that Complainant has built up in its VIRGIN and VIRGIN CASINO trademarks. Finally, Complainant argues that Respondent has registered and is using the disputed domain names in bad faith since (1) it is highly unlikely that Respondent was unaware of Complainant's VIRGIN and VIRGIN CASINO trademarks when registering the disputed domain names, and (2) the nature of use of the websites under the disputed domain names will be disruptive to Complainant's business and potentially will tarnish the reputation in Complainant's VIRGIN and VIRGIN CASINO trademarks.

B. Respondent

Respondent did not reply to Complainant's contentions.

6. Discussion and Findings

Under paragraph 4(a) of the Policy, Complainant carries the burden of proving:

- (i) That the disputed domain names are identical or confusingly similar to a trademark or service mark in which Complainant has rights; and
- (ii) That Respondent has no rights or legitimate interests in respect of the disputed domain names; and
- (iii) That the disputed domain names have been registered and are being used in bad faith.

Respondent's default in the case at hand does not automatically result in a decision in favor of Complainant, however, paragraph 5(f) of the Rules provides that if Respondent does not submit a response, in the absence of exceptional circumstances, the Panel shall decide the dispute solely based upon the Complaint. Further, according to paragraph 14(b) of the Rules, the Panel may draw such inferences from Respondent's failure to submit a Response as it considers appropriate.

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 Complainant's VIRGIN and VIRGIN CASINO trademarks and the disputed domain names. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 1.7.

Based on the available record, the Panel finds 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 Panel finds the entirety of Complainant's VIRGIN and VIRGIN CASINO trademarks is reproduced within the disputed domain names. Accordingly, the disputed domain names are identical or confusingly similar to those trademarks for the purposes of the Policy. [WIPO Overview 3.0](#), sections 1.7 and 1.11.3.

Based on the available record, 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 Respondent may demonstrate rights or legitimate interests in the disputed domain names.

While 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 often-impossible 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. 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 record, the Panel finds Complainant has established a *prima facie* case that Respondent lacks rights or legitimate interests in the disputed domain names. Respondent has not rebutted 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.

In particular, the Panel notes that Respondent has not been authorized to use Complainant’s VIRGIN and VIRGIN CASINO trademarks, either as domain names or in any other way. Also, there is no reason to believe that Respondent’s name somehow corresponds with the disputed domain names and Respondent does not appear to have any trademark rights associated with the terms “virgin” and/or “casino” on its own. To the contrary, Respondent, at some point before the filing of the Complaint, let the disputed domain names resolve to similar websites purporting to offer online casino/online gambling services, thereby prominently displaying Complainant’s VIRGIN and VIRGIN CASINO trademarks and official logos without any authorization to do so, and also redirecting to third-party websites, including Complainant’s competitors in the online gaming and online gambling industry. Such making use of the disputed domain names neither qualifies as *bona fide* nor as legitimate noncommercial or fair within the meaning of the Policy.

Based on the available record, 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 circumstances leave no doubts that Respondent was fully aware of Complainant’s rights in the VIRGIN and VIRGIN CASINO trademarks when registering the disputed domain names and that the latter are clearly directed thereto. Moreover, using the disputed domain names, which are almost identical or at least confusingly similar to those trademarks, to run similar websites purporting to offer online casino/online gambling services, thereby prominently displaying Complainant’s VIRGIN and VIRGIN CASINO trademarks and official logos without any authorization to do so, and also redirecting to third-party websites, including Complainant’s competitors in the online gaming and online gambling industry, is a clear indication that Respondent intentionally attempted to attract, for commercial gain, Internet users to its own websites by creating a likelihood of confusion with Complainant’s VIRGIN and VIRGIN CASINO trademarks as to the source, sponsorship, affiliation or endorsement of Respondent’s websites. Such circumstances are evidence of registration and use of the disputed domain name in bad faith within the meaning of paragraph 4(b)(iv) of the Policy.

Based on the available record, the Panel, therefore, finds the third element of the Policy has been established.

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, <thevirgincasino.com> as well as <vir-gin.casino>, be transferred to Complainant.

/Stephanie G. Hartung/

Stephanie G. Hartung

Sole Panelist

Date: October 9, 2023