

ADMINISTRATIVE PANEL DECISION

Virgin Enterprises Limited v. ejaz ahmed

Case No. D2023-3936

1. The Parties

The Complainant is Virgin Enterprises Limited, United Kingdom (“UK”), represented by AA Thornton IP LLP, UK.

The Respondent is ejaz ahmed, Pakistan.

2. The Domain Name and Registrar

The disputed domain name <thevirginholidays.com> is registered with GoDaddy.com, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on September 20, 2023. On September 21, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On the same date, 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 (Domains By Proxy LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on September 22, 2023, 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 September 27, 2023.

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 proceeding commenced on September 29, 2023. In accordance with the Rules, paragraph 5, the due date for Response was October 19, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on October 20, 2023.

The Center appointed Sebastian M. W. Hughes as the sole panelist in this matter on October 26, 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

A. Complainant

The Complainant is a company headquartered in the UK and part of the Virgin group of companies.

The Complainant is the owner of numerous registrations in jurisdictions worldwide for trademarks comprising the word “virgin”, including European Union registration No. 014032098 for the trademark VIRGIN HOLIDAYS (the “Trade Mark”), with a registration date of December 3, 2015.

B. Respondent

The Respondent is apparently located in Pakistan.

C. The Disputed Domain Name

The disputed domain name was registered on December 8, 2022.

D. Use of the Disputed Domain Name

The disputed domain name is resolved to an English language website using the sign “THE VIRGIN HOLIDAYS”, and with the appearance of a website offering packaged holidays and tours (the “Website”).

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, although the Website has the initial appearance of a website offering packaged holidays and tours:

- (i) none of the links function;
- (ii) the Instagram button resolves back to the home page;
- (iii) there are a number of spelling mistakes and poor use of English;
- (iv) some of the text appears to have been copied from third party websites;
- (v) Internet searches for the addresses listed in the “contact us” section suggest the addresses do not exist; and
- (vi) the “customer reviews” page refers to an apparently unrelated elderly care home business, and one of the reviews contains Latin placeholder text.

The Complaint contends that the “customer enquiry” form on the Website is designed to engage in phishing, by obtaining personal contact details of Internet users (name, email address and telephone number), for fraudulent means.

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.

Based on the available record, the Panel finds 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 Panel finds the entirety of the mark is reproduced within the disputed domain name. Accordingly, the disputed domain name is identical or confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

While the addition of other terms (here, “the”) 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.

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 the Respondent may demonstrate rights or legitimate interests in a disputed domain name.

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 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.

The Panel notes that, in addition to the matters raised by the Complainant (see Section 5.A. above), several aspects of the Website do not indicate a *bona fide* website, for example, the use of the same stock images for purported travel destinations; and the use of text apparently unrelated to the name of the Website and which appears to be made up (“Customize your tour according to your budget, date and wished destinations.

'Easy Fly Tour' expert team will help you to make your holidays unforgettable memories"; "If you are looking to spend a fabulous summer soaking in the sun and the waves, the best place to go would be Bali, Indonesia. Read on about my adventures there, find out about delectable local cuisines and must-visit places in Bali"; "Las Vegas"; "Customize your tour according to your budget date and wished destinations"; and "Says About The Virgin Holidays").

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, considering (i) the well-known status of the Complainant's trademark; (ii) the nature of the disputed domain name which reproduces the entirety of the Complainant's VIRGIN HOLIDAYS mark; (iii) the failure of the Respondent to come forward with any evidence or rights or legitimate interests in the disputed domain name; (iv) the un rebutted evidence indicating that the disputed domain name is not being used for any bona fide offering of goods and/or services, and; (v) the use of a privacy service to conceal the respondent's identity, are, altogether, circumstances that indicate that the Respondent has, more likely than not, registered and is using the disputed domain name in an attempt to capitalize on the Complainant's trademarks due to the likelihood of confusion of such with the disputed domain name.

In addition, the Panel notes that the Respondent has registered and used the disputed domain name in respect of a likely phishing Website.

Panels have held that the use of a domain name for illegal activity (e.g., the 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.

Based on the available record, the Panel 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 name <thevirginholidays.com> be transferred to the Complainant.

/Sebastian M.W. Hughes/

Sebastian M.W. Hughes

Sole Panelist

Date: November 9, 2023