

ADMINISTRATIVE PANEL DECISION

Virgin Enterprises Limited v. Manuel Avendano
Case No. D2023-4158

1. The Parties

The Complainant is Virgin Enterprises Limited, United Kingdom, represented by A. A. Thornton & Co., United Kingdom.

The Respondent is Manuel Avendano, United States of America ("United States").

2. The Domain Name and Registrar

The disputed domain name <virginmusicgroup.com> is registered with NameCheap, Inc. (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on October 5, 2023. On October 6, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On October 6, 2023, 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, Privacy service provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to the Complainant on October 8, 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 amendment to the Complaint on October 10, 2023.

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 October 11, 2023. In accordance with the Rules, paragraph 5, the due date for Response was October 31, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on November 3, 2023.

The Center appointed Edoardo Fano as the sole panelist in this matter on November 16, 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.

The Panel has not received any requests from the Complainant or the Respondent regarding further submissions, waivers or extensions of deadlines, and the Panel has not found it necessary to request any further information from the Parties.

Having reviewed the communication records in the case file provided by the Center, the Panel finds that the Center has discharged its responsibility under the Rules, paragraph 2(a), “to employ reasonably available means calculated to achieve actual notice to [the] Respondent”. Therefore, the Panel shall issue its Decision based upon the Complaint, the Policy, the Rules and the Supplemental Rules and without the benefit of a response from the Respondent.

The language of the proceeding is English, being the language of the Registration Agreement, as per paragraph 11(a) of the Rules.

4. Factual Background

The Complainant is Virgin Enterprises Limited, a United Kingdom company incorporated in 1970 as a mail order company called Virgin Mail Order and specialized in popular music records, to become Virgin Records Limited in 1972. In 1992, Virgin Records Limited was sold to Thorn EMI, and when Thorn EMI demerged in 1996, EMI Group plc acquired Virgin Records Limited. In 2012, Universal Music Group acquired EMI Group including the Virgin record label and continued to operate it under the new name Virgin EMI Records until 2021, when it was changed to EMI Records. In February 2021, Universal Music Group launched Virgin Music Label and Artist Services, as a new global network to deliver artist and label services worldwide, and on September 13, 2022, the same day the disputed domain name was registered, Universal Music Group announced the launch of Virgin Music Group unifying the regional hubs existing under Virgin Music Label and Artist Services. Today, the Complainant operates in a diverse range of sectors, among which financial services, health and wellness, music and entertainment, telecommunications and media, travel and leisure, and owns several trademark registrations all over the world for VIRGIN, among which:

- United Kingdom Trademark Registration No. UK00003163121 for VIRGIN, registered on July 29, 2016;
- European Union Trade Mark Registration No. 1141309 for VIRGIN, registered on May 21, 2012;
- United States Trademark Registration No. 4,398,320 for VIRGIN, registered on September 13, 2013.

The Complainant also operates on the Internet, its main website being “www.virgin.com”, and “www.virginmusic.com” being its website for the Virgin Music and Virgin Music Group business.

The Complainant provided evidence in support of the above.

According to the Whois records, the disputed domain name was registered on September 13, 2022, and it redirects to the website “www.universalmusic.com”, that is the Universal Music Group’s official 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 states that the disputed domain name is confusingly similar to its trademark VIRGIN, as the disputed domain name wholly contains the Complainant's trademark with the addition of the terms "music" and "group", both of them concerning the Complainant's business in connection with record label, artist management, and music distribution services.

Moreover, the Complainant asserts that the Respondent has no rights or legitimate interests in respect of the disputed domain name since it has not been authorized by the Complainant to register the disputed domain name or to use its trademark within the disputed domain name, it is not commonly known by the disputed domain name and it is not making either a bona fide offering of goods or services or a legitimate noncommercial or fair use of the disputed domain name. The disputed domain name redirects to the website "www.universalmusic.com", that is the Universal Music Group's official website, in which there is a webpage dedicated to the Complainant's Virgin Music Group business as well as a link to the Complainant's Virgin Music website.

The Complainant submits that the Respondent has registered the disputed domain name in bad faith, since the Complainant's trademark VIRGIN is distinctive and well known. Therefore, the Respondent targeted the Complainant's trademark at the time of registration of the disputed domain name and the Complainant contends that the use of the disputed domain name to redirect to the to Universal Music Group's official website, in which there is a webpage dedicated to the Complainant's Virgin Music Group business as well as a link to the Complainant's Virgin Music website, creates the impression of a relationship between the Respondent and the Complainant and disrupts the Complainant's business, qualifying as bad faith registration and use.

Finally, the Complainant suspects that the Respondent might also use the disputed domain name in connection with phishing or fraudulent email communications, since the mail exchanger (MX) records attached to the disputed domain name have been activated.

B. Respondent

The Respondent has made no reply to the Complainant's contentions and is in default. In reference to paragraphs 5(f) and 14 of the Rules, no exceptional circumstances explaining the default have been put forward or are apparent from the record.

A respondent is not obliged to participate in a proceeding under the Policy, but if it fails to do so, reasonable facts asserted by a complainant may be taken as true, and appropriate inferences, in accordance with paragraph 14(b) of the Rules, may be drawn. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.3.

6. Discussion and Findings

Paragraph 4(a) of the Policy lists three elements, which the Complainant must satisfy in order to succeed:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
- (ii) the Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- (iii) the disputed domain name has been registered and is 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.

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 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 “music” and “group”, may bear on assessment of the second and third elements, the Panel finds the addition of such terms 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.

It is also well accepted that a generic Top Level Domain, in this case “.com”, is typically ignored when assessing the similarity between a trademark and a domain name. [WIPO Overview 3.0](#), section 1.11.1.

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. On the contrary, the use of the disputed domain name for redirecting Internet users to the website “www.universalmusic.com”, that is the Universal Music Group’s official website, in which there is a webpage dedicated to the Complainant’s Virgin Music Group business as well as a link to the Complainant’s Virgin Music website, is likely to create confusion with the Complainant’s trademark as to the disputed domain name’s source, sponsorship, affiliation or endorsement.

Moreover, the Panel finds that the composition of the disputed domain name, including the terms “music” and “group” relevant to the Complainant’s Virgin Music Group business, carries a risk of implied affiliation as it effectively impersonates or suggests sponsorship or endorsement by the Complainant. [WIPO Overview 3.0](#), section 2.5.1.

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, regarding the registration in bad faith of the disputed domain name, the reputation of the Complainant's trademark VIRGIN is clearly established, and the Panel finds that the Respondent must have known of the Complainant, and deliberately registered the disputed domain name in bad faith, especially because the disputed domain name redirects to the website "www.universalmusic.com", that is the Universal Music Group's official website, in which there is a webpage dedicated to the Complainant's Virgin Music Group business as well as a link to the Complainant's Virgin Music website.

The Panel further notes that the disputed domain name is also being used in bad faith since the Respondent is redirecting the disputed domain name to the Universal Music Group's official website "www.universalmusic.com", in which there is a webpage dedicated to the Complainant's Virgin Music Group business as well as a link to the Complainant's Virgin Music website, creating likelihood of confusion with the Complainant's trademark as to source, sponsorship, affiliation or endorsement.

Furthermore, the Panel considers that the nature of the inherently misleading disputed domain name, which includes the Complainant's trademark in its entirety with the mere addition of the terms "music" and "group", both of them concerning the Complainant's business in connection with record label, artist management and music distribution services, further supports a finding of bad faith. [WIPO Overview 3.0](#), section 3.2.1.

Finally, since the MX records attached to the disputed domain name have been activated, noting the nature of the disputed domain name (being it identical to the Complainant's business under the brand Virgin Music Group), the Panel deems that there is a risk that the disputed domain name could be used for phishing activities.

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, <virginmusicgroup.com> be transferred to the Complainant.

/Edoardo Fano/

Edoardo Fano

Sole Panelist

Date: November 27, 2023