

ADMINISTRATIVE PANEL DECISION

Virgin Enterprises Limited v. virgin holdings
Case No. D2022-3421

1. The Parties

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

The Respondent is virgin holdings, United States of America (“United States”).

2. The Domain Name and Registrar

The disputed domain name <virginholdingslimited.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 September 14, 2022. On September 15, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On September 15, 2022, 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 (Privacy service provided by Withheld for Privacy ehf, Iceland) and contact information in the Complaint. The Center sent an email communication to the Complainant on September 16, 2022 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 21, 2022.

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 proceedings commenced on September 28, 2022. In accordance with the Rules, paragraph 5, the due date for Response was October 18, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on October 19, 2022.

The Center appointed James Wang as the sole panelist in this matter on October 28, 2022. 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 is the owner of the VIRGIN brand. 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.

The Complainant owns a substantial portfolio of trademark applications and registrations covering different classes of goods and services.

The Complainant is the owner of multiple trademark registrations for VIRGIN across various jurisdictions, including but not limited to the following:

- United Kingdom trademark registration No. UK00002601995 VIRGIN in classes 9, 35, 36, 38, and 41, registered on February 24, 2012 with a filing date of November 18, 2011;
- United Kingdom trademark registration No. UK00801146047 VIRGIN (stylized) in classes 9, 35, 36, 38, and 41, registered on December 16, 2013 with a filing date of May 21, 2012;
- International trademark registration No. 1141309 VIRGIN in classes 9, 35, 36, 38, and 41, designating *inter alia* United States, the international registration date of which is May 21, 2012;
- International trademark registration No. 1146047 VIRGIN (stylized) in classes 9, 35, 36, 38, and 41 designating *inter alia* United States, the international registration date of which is May 21, 2012.

The Complainant and its related companies operate pages on various social media platforms where the VIRGIN trademarks are featured prominently.

The disputed domain name was created on June 16, 2022. At the time of filing of the Complaint, the disputed domain name resolved to a website purporting to promote an asset management and investment platform by a company named "Virgin Holdings Limited". At the time of drafting of this Decision, the disputed domain name no longer opens for any active website.

5. Parties' Contentions

A. Complainant

The Complainant contends as follows:

The disputed domain name is identical or confusingly similar to the VIRGIN trademark in which the Complainant has rights. The Respondent has no rights or legitimate interests in respect of the disputed domain name. The disputed domain name was registered and is being used in bad faith.

The Complainant requested that the disputed domain name be transferred to the Complainant.

B. Respondent

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

6. Discussion and Findings

According to paragraph 4(a) of the Policy, the Complainant must prove that:

- (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

The Complainant has provided evidence that it is the registrant of multiple VIRGIN trademark registrations across different jurisdictions.

The disputed domain name incorporates the entirety of the Complainant's VIRGIN trademark. As the VIRGIN trademark is recognizable within the disputed domain name, the disputed domain name is confusingly similar to the Complainant's VIRGIN trademark. The addition of the terms "holdings" and "limited" into the disputed domain name does not prevent a finding of confusing similarity. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), sections 1.7 and 1.8.

The Panel therefore finds that the Complaint has satisfied paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

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. See [WIPO Overview 3.0](#), section 2.1.

According to the Complaint, neither the disputed domain name, the website to which the disputed domain name resolved, nor the purported "Virgin Holdings Limited" investment platform, are operated by or in any way connected to the Complainant. There is no evidence that the Respondent is using, has used or has any plans to use the disputed domain name in connection with a legitimate purpose, or that the Respondent has ever been known by the disputed domain name.

The Complainant has provided evidence showing that the purported company "Virgin Holdings Limited" on the website at the disputed domain name is in fact the name of an incorporated company that is part of the Virgin Group. Further, the website also stated that it was part of the Virgin Group and used the registered office address and headquarters of the Virgin Group, the Complainant and of the Virgin Group company Virgin Holdings Limited as "our location". Moreover, the "About Us" section of the website stated that the purported investment platform was founded in 1990, although elsewhere it stated that it was founded in May 2009. The images of the "Expert Team" on the "About Us" webpage of the website used stock images taken from an image bank.

The Complainant has also provided evidence showing that on September 3, 2022, the Complainant received a notification via email from a member of the public advising that they had tried to invest in the company Virgin Holdings Limited via the website at the disputed domain name, but was now unable to withdraw their capital. The member of the public wanted to know if that company and the purported Virgin Holdings Limited investment business was genuine or a scam.

The Respondent submitted no response or evidence to rebut the allegations of the Complainant.

The Panel finds that the Complainant has made a *prima facie* case that the Respondent lacks rights or legitimate interests, and the Respondent failed to come forward with relevant evidence demonstrating rights or legitimate interests in the disputed domain name.

Moreover, UDRP panels have categorically held that the use of a domain name for illegal activity (e.g., impersonation/passing off) can never confer rights or legitimate interests on a respondent. See [WIPO Overview 3.0](#), section 2.13.1.

The Panel therefore finds that the Complaint has satisfied paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

The Complainant has provided evidence that the Complainant's VIRGIN trademarks are well known for *inter alia* financial services. As mentioned above, the Complainant's evidence shows that the website to which the disputed domain name resolved had stated that it was part of the Virgin Group and provided the Complainant's address.

Given the above, it would be inconceivable that the Respondent registered the disputed domain name without knowledge of the Complainant or the VIRGIN trademark at the time of the registration. The Panel therefore agrees with the Complainant's contention that the disputed domain name was registered in bad faith.

The Complainant has also provided evidence that the website to which the disputed domain name resolved stated that "Virgin Holdings is pioneering the bridge between traditional asset management and cutting edge technology" and offered various "Plans", with options to invest 200 USD, 10,000 USD or 20,000 USD, which indicates that the Respondent has an intent to profit in some fashion from or otherwise exploit the Complainant's trademark and has intentionally attempted to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant. The Panel agrees with the Complainant's contention that the Respondent is using the disputed domain name in bad faith. See [WIPO Overview 3.0](#), section 3.1.4.

The current non-use of the disputed domain name does not change the Panel's finding of bad faith under the passive holding doctrine. See [WIPO Overview 3.0](#), section 3.3.

The Panel therefore finds that the Complaint has satisfied paragraph 4(a)(iii) 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 <virginholdingslimited.com> be transferred to the Complainant.

/James Wang/

James Wang

Sole Panelist

Date: November 11, 2022