

ADMINISTRATIVE PANEL DECISION

Virgin Enterprises Limited v. SEAN MICHAEL, Workplace Creation
Case No. D2024-1397

1. The Parties

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

Respondent is SEAN MICHAEL, Workplace Creation, UK.

2. The Domain Name and Registrar

The disputed domain name <unitedbvi.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 April 2, 2024. On April 3, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 3, 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) and contact information in the Complaint. The Center sent an email communication to Complainant on April 4, 2024, providing the registrant and contact information disclosed by the Registrar and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amended Complaint on April 8, 2024.

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 Respondent of the Complaint, and the proceedings commenced on April 10, 2024. In accordance with the Rules, paragraph 5, the due date for Response was April 30, 2024. Respondent did not submit any response. However, the Center received two email communications from a third party on April 11 and 12, 2024.

Pursuant to paragraph 6 of the Rules, the Center notified the Parties of the commencement of the panel appointment process May 2, 2024.

The Center appointed Jeffrey D. Steinhardt as sole panelist in this matter on May 27, 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

A project of Complainant's non-profit Virgin Unite organization, Unite BVI supports substantial charitable works in the British Virgin Islands, UK.

Complainant owns a portfolio of registrations for its UNITE BVI marks in many countries. Among them, Complainant owns the following trade mark registrations: British Virgin Islands UK D Trade Mark Registration No. 7710 in classes 35, 36, 41 and 45; UK Trade Mark Registration No. UK00003268156 in classes 35, 36, 41 and 45; and United States of America Trade Mark Registration No. 5785048 in classes 35, 36, 41 and 45.

The disputed domain name was registered on March 25, 2024, and routes to a webpage displaying Pay-Per-Click ("PPC") links.

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 name.

Complainant alleges that the disputed domain name is being used for an email address that is part of a complex phishing scam.

Complainant alleges that the day following registration of the disputed domain name, emails were sent which falsely appeared to have been sent by a trustee of Unite BVI. (Complainant provides several annexes to the Complaint showing the alleged emails and screens supporting the operation of the fraudulent phishing scheme). The emails, which are sent from an unrelated website but represent that the trustee has sent them, contain links appearing to contain files including one named "Unite BVI – Confirmation of Wire Transfer Donation.htm." By following the various links to download sites to access the purported files, users would be required to submit sensitive personal information including email addresses and passwords. Complainant avers that any replies to the phishing email would be sent to the unauthorized email address containing the trustee's name at the disputed domain name email address and that neither the disputed domain name nor the associated email address are authorized by or connected to Complainant, the Virgin Group or Unite BVI.

B. Respondent

Respondent did not reply to Complainant's contentions. However, a third party contacted the Center on April 11 and 12, 2024, seemingly in receipt of the Center's written communication to Respondent, but stating that no one under Respondent's (individual) name was at the third party's organization.

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

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.

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.

Although the addition of other terms may bear on assessment of the second and third elements, here, the single letter "d" in the middle of the UNITE BVI mark, the Panel finds the addition of the additional letter 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.

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 a 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.

Complainant has provided unopposed, credible evidence that the disputed domain name is being used in a fraudulent phishing scheme.

Having reviewed the available record, the Panel finds that Complainant has established a prima facie case that Respondent lacks rights or legitimate interests in the disputed domain name. 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 name such as those enumerated in the Policy or otherwise.

As noted above, Complainant has made credible, unopposed allegations of the use of the disputed domain name for illegal impersonation and fraud. Panels have held that the use of a domain name for illegal activity can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

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 Panel notes that Complainant has demonstrated that Respondent registered the disputed domain name and almost immediately used it to impersonate officials of Complainant as a part of Respondent's fraudulent phishing scheme. Complainant's evidence is unopposed.

Panels have held that the use of a domain name for illegal activity constitutes bad faith. [WIPO Overview 3.0](#), section 3.4.

Having reviewed the record, the Panel finds that Respondent's registration and use of the disputed domain name constitutes bad faith under the Policy.

The Panel finds that 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 <unitedbvi.com> be transferred to Complainant.

/Jeffrey D. Steinhardt/

Jeffrey D. Steinhardt

Sole Panelist

Date: June 10, 2024