

ADMINISTRATIVE PANEL DECISION

Virgin Enterprises Limited v. Algon Consult
Case No. D2022-3036

1. The Parties

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

The Respondent is Algon Consult, United States of America.

2. The Domain Name and Registrar

The disputed domain name <virgininvesthub.com> is registered with OwnRegistrar, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on August 17, 2022. On August 18, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On August 19, 2022, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details.

The Center verified that 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 August 22, 2022. In accordance with the Rules, paragraph 5, the due date for Response was September 11, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on September 15, 2022.

The Center appointed Ganna Prokhorova as the sole panelist in this matter on September 20, 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 a part of the Virgin Group, a diverse range of over 40 businesses. It is the proprietor of numerous trademark registrations for its VIRGIN marks, including the following:

- UK Trademark Registration No. UK00003163121 for the mark VIRGIN registered on July 29, 2016 in classes 03, 05, 09, 11, 12, 14, 16, 31, 32, 33, 35, 36, 38, 39, 41, 42, 43, 44, and 45;
- EU Trademark Registration No. 018156337 for the mark VIRGIN MOBILE & dev. registered on May 22, 2020 in classes 9, 35, and 38;
- International Trademark Registration No. 1141309 for the mark VIRGIN registered on May 21, 2012 in classes 09, 35, 36, 38, and 41;
- International Trademark Registration No. 1117877 for mark VIRGIN MOBILE & device registered on January 19, 2012 in classes 09, 35, 36, and 38.

The Complainant owns a website “www.virgin.com” since 2000 to promote the activities of the VIRGIN Group and its businesses, ventures and foundations.

This disputed domain name was registered on April 6, 2022. On the moment of filing the Complaint the disputed domain name resolved to a website that purports to offer telecommunication services and contained text, content, images, and layout of the homepage of one of the websites of the Complainant as well as its VIRGIN and VIRGIN MOBILE marks.

5. Parties' Contentions

A. Complainant

Under the first element, the Complainant states that the Virgin Group serves 50 million customers in the financial services, health and wellness, music and entertainment, people and planet, telecommunications and media, travel and leisure. The VIRGIN brand has been heavily promoted since its inception. The Complainant has registered over 5,000 domains consisting of or incorporating its VIRGIN mark and owns 3,500 trademark applications and registrations in over 150 countries covering the majority of the 45 Nice classes of goods and services. The VIRGIN businesses, ventures and foundations are branded with marks incorporating the distinctive VIRGIN name and sub brands, such as Virgin Active, Virgin Money, Virgin Media.

The disputed domain name incorporates the Complainant's VIRGIN mark in its entirety. The insertion of the terms “invest” and “hub” does not detract from the confusing similarity.

Under the second element, the Complainant states that the disputed domain name resolves to websites that imitates the look and feel of the Complainant's official website. The website contains marks identical to the Complainant's registered VIRGIN and VIRGIN MOBILE marks and logos, and uses images from the Complainant's website. The Complainant states that the Respondent is not in any way affiliated or authorized by the Complainant. The Respondent is perpetuating a fraudulent scheme to obtain the personal data of Internet users.

Under the third element, the Complainant states that its VIRGIN marks are extremely well-known. The Respondent is clearly aware of the Complainant, as demonstrated by the use of the Complainant's marks and logos. By using the disputed domain name, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to the “www.virgininvesthub.com” website by creating a likelihood of confusion with the Complainant's marks as to the source, sponsorship, affiliation, or endorsement. The Respondent registered and is using the disputed domain name in bad faith.

The Complainant requests transfer of the disputed domain name.

B. Respondent

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

6. Discussion and Findings

To succeed, the Complainant must demonstrate that all the elements listed in paragraph 4(a) of the Policy have been satisfied, as following:

- (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.

The Respondent failed to submit a response in accordance with paragraph 5(a) of the Rules. Paragraph 5(f) of the Rules establishes that if a respondent does not respond to the Complaint, the Panel's decision shall be based upon the Complaint.

The Complainant bears the burden of proving that all these requirements are fulfilled, even if the Respondent has not replied to the Complainant's contentions.

However, concerning the uncontested information provided by the Complainant, the Panel may, where relevant, accept the provided reasonable factual allegations in the Complaint as true. See, section 4.3 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

It is further noted that the Panel has taken note of the [WIPO Overview 3.0](#) and, where appropriate, will decide consistent with the consensus views captured therein.

A. Identical or Confusingly Similar

According to paragraph 4(a)(i) of the Policy it should be established that the disputed domain name is identical or confusingly similar to a mark in which the complainant has rights.

The Complainant has provided evidence establishing that it has trademark rights in the VIRGIN marks through registrations in the United Kingdom, European Union, and international registrations. The Complainant thereby satisfies the threshold requirement of having trademark rights for purposes of standing to file a UDRP case. See [WIPO Overview 3.0](#), section 1.2.1.

In comparing the Complainant's marks with the disputed domain name, the Panel finds that the disputed domain name is confusingly similar to the Complainant's marks. The disputed domain name begins with the Complainant's VIRGIN mark followed by the terms "invest" and "hub". It is the consensus view of UDRP panels that, where a domain name incorporates the entirety of a trademark, the domain name will normally be considered confusingly similar to that mark. Moreover, where the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element. See [WIPO Overview 3.0](#), sections 1.7 and 1.8.

The addition of the generic Top-Level Domain ".com" shall be disregarded for the purposes of assessing confusing similarity, as it is a standard requirement of registration. See [WIPO Overview 3.0](#), section 1.11.1.

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

B. Rights or Legitimate Interests

Under paragraph 4(a)(ii) of the Policy, the Complainant has the burden of establishing that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

While the burden of proof remains with the Complainant, the Panel recognizes that this would often result in the impossible task of “proving a negative”, in particular as the evidence needed to show the Respondent’s rights or legitimate interests is often primarily within the knowledge of the Respondent. Therefore, the Panel agrees with prior UDRP panels that the Complainant is required to make out a *prima facie* case before the burden of production shifts to the Respondent to show that it has rights or legitimate interests in the disputed domain name to meet the requirements of paragraph 4(a)(ii) of the Policy.

The Complainant made sufficient statements in order to demonstrate that the Respondent would have no rights or legitimate interests into the disputed domain name.

In particular, the Panel notes that the case file does not show that the Respondent would be known as “virgin” or “virgininvesthub” or that a legitimate business would be run by the Respondent under the disputed domain name.

The Panel has found out that the Respondent is not a licensee of the Complainant and not affiliated with the Complainant in any way. The Complainant has not granted any authorization for the Respondent to make use of its trademarks in a domain name or otherwise.

Given the high similarity between the Complainant’s marks and the disputed domain name, and the level of reputation the Complainant has acquired in the Complainant’s marks in connection with telecommunications and mobile services, and given that the website “www.virgininvesthub.com” copies a substantial amount of one of the Complainant’s websites, it is likely that Internet users searching for the Complainant’s genuine mobile and telecommunications services would be deceived into thinking that the disputed domain name is operated by or otherwise connected to the Complainant. Such bad faith activity using the Complainant’s marks cannot confer rights or legitimate interests. See [WIPO Overview 3.0](#), section 2.13.

This use of the disputed domain name demonstrates that the Respondent does not have a legitimate interest in the disputed domain name. There is no evidence the Respondent has or intends to use the disputed domain name in connection with a *bona fide* offering of goods or services.

The Respondent has not provided any rebuttal of the Complainant’s *prima facie* case and has therefore not proved rights or legitimate interests in the disputed domain name.

Accordingly, the Panel finds that the Complainant has established the second element under paragraph 4(a) of the Policy.

C. Registered and Used in Bad Faith

According to paragraph 4(a)(iii) of the Policy, the Complainant must prove on the balance of probabilities both that the disputed domain name was registered in bad faith and that it is being used in bad faith.

The Panel finds that the Complainant has demonstrated the Respondent’s bad faith registration and use of the disputed domain name. The Complainant holds multiple trademark registrations for the mark VIRGIN including in the United Kingdom, European Union, and international registrations that predate the registration of the disputed domain name.

Given the level of reputation the Complainant has acquired in its VIRGIN trademarks in connection with telecommunications and mobile services, and the fact that the website to which the disputed domain name

resolves copies a substantial amount of one of the Complainant's websites, it is inconceivable that the Respondent coincidentally selected the disputed domain name without any knowledge of the Complainant and its trademark VIRGIN.

Considering the above, the Respondent could not be unaware of the Complainant's trademark when registering the disputed domain name. Hence, the Panel finds that the Respondent knew or should have known of the Complainant's trademark and deliberately registered the confusingly similar disputed domain name (see section 3.2.2, [WIPO Overview 3.0](#)).

Furthermore, the Complainant has established that the Respondent's intent in registering the disputed domain name was in fact to profit from or otherwise exploit the Complainant's trademark because the webpages which are linked to the disputed domain name were set up in a way to create a confusion with the Complainant, notably by widely using the well-known trademark VIRGIN on the said site, term which insinuates a connection with the Complainant, its business and the VIRGIN brand (see section 3.1.1., [WIPO Overview 3.0](#)).

This manner of use of the disputed domain name is clearly in bad faith. Given the lack of evidence indicating any legitimate interest in the disputed domain name on the part of the Respondent, and the deliberate attempt to deceive, and potentially defraud, consumers through use of the disputed domain name, it is inconceivable that the Respondent had any good faith intention at the time of registering the disputed domain name.

The fact that the said website is also aiming at collecting details of Internet users (phishing site) is another indication of bad faith use.

The Respondent has provided no evidence of actual or contemplated good-faith use of the disputed domain names and the Panel does not find any such use plausible.

In light of the above, the Panel finds that the Respondent has registered and used the disputed domain name in bad faith and that the Complainant has established its case under 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, <virgininvesthub.com> be transferred to the Complainant.

/Ganna Prokhorova/

Ganna Prokhorova

Sole Panelist

Date: October 4, 2022