

ADMINISTRATIVE PANEL DECISION

Virgin Enterprises Limited v. Dani Luke
Case No. D2022-3071

1. The Parties

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

The Respondent is Dani Luke, UK.

2. The Domain Name and Registrar

The disputed domain name <virginmm.com> is registered with Gname.com Pte. Ltd. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on August 19, 2022. On August 19, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On August 29, 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 and contact information in the Complaint. The Center sent an email communication to the Complainant on August 30, 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 2, 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 13, 2022. In accordance with the Rules, paragraph 5, the due date for Response was October 3, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on October 11, 2022.

The Center appointed Clive Duncan Thorne as the sole panelist in this matter on October 25, 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 part of the Virgin Group and is the owner of the brand and associated trade marks; VIRGIN. The VIRGIN brand was originally established by its founder and chairman, Sir Richard Branson when he started a business selling popular music records by mail order under the mark VIRGIN.

Since then its operations have grown significantly. Currently businesses branded VIRGIN 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. There are now more than 40 VIRGIN branded businesses which have over 50 million customers worldwide and employ more than 60,000 people across five business sectors and five continents.

The Complainant relies upon the following trade mark registrations:

UK registration VIRGIN No. UK00001585773 in class 36 registered October 20, 1995;

UK registration VIRGIN No. UK00002601995 in classes 9,35,36,38 and 41 registered February 24, 2012;

European Union ("EU") registration VIRGIN MONEY No. 014032247 in classes 9, 35, 36, 38 and 42 registered December 3, 2015;

EU registration VIRGIN (signature logo) No. 015404841 in classes 3, 5, 9, 11, 12, 14, 16, 31, 32, 33, 35, 36, 38, 39 and 41 - 45 registered December 2, 2016;

International registration VIRGIN No. 1141309 in classes 9, 35, 36, 38 and 41 registered May 21, 2012 designating Australia, Bahrain, Egypt, EU, Morocco, Oman, Russian Federation, Ukraine and the United States of America.

UK registration VIRGIN MONEY No. UK00002177329 in class 36 registered May 21, 1999;

New Zealand registration VIRGIN MONEY No. 704834 in class 36 registered September 9, 2004;

Australian registration VIRGIN MONEY No.1029200 in class 36 registered November 10, 2004;

Australian registration VIRGIN MONEY No. 983116 in class 36 registered December 23, 2003;

UK registration VIRGIN MONEY (logo) No. UK00918161478 in classes 9, 16, 35 and 36 registered May 22, 2020;

EU registration VIRGIN MONEY (logo) No. 018161478 in classes 9, 16, 35 and 36 registered May 22, 2020.

Copies of the above registered marks are exhibited at Annex 4 to the Complaint.

The VIRGIN name and VIRGIN signature logo have all been consistently and intensively used across all VIRGIN operations since the company was founded. The VIRGIN businesses, ventures and foundations are branded with marks incorporating the distinctive VIRGIN name or VIRGIN signature logo, for example; Virgin Active, Virgin Money and Virgin Media. A copy of a webpage from the Complainant's website at "www.virgin.com" that lists the Virgin businesses and charitable ventures under their respective VIRGIN and VIRGIN signature logo marks is exhibited at Annex 5 to the Complaint.

The Complainant has built up a considerable online presence and is the proprietor of over 5000 domain names consisting of or incorporating the mark VIRGIN. It has also operated a website at “www.virgin.com” since 2000 to promote the activities of the Virgin group and its businesses, ventures and foundations. The website contains links to the web pages for most of the companies in the Virgin group. Exhibited at Annex 6 are screenshots of the website and a timeline showing the history of the Virgin Group.

The VIRGIN businesses operate pages on various social media platforms where the mark VIRGIN also features prominently. These platforms receive over 37 million views each year. This serves to demonstrate the widespread exposure of the VIRGIN brand worldwide and its consequent significant global reputation. Screenshots are exhibited at Annex 7 from which it can be seen that the Complainant’s registered marks are placed prominently.

Virgin Money is part of the Virgin Group and provides financial services which it commenced in 1995 as Virgin Direct, changing its name to Virgin Money in 2002. It is now the sixth largest bank in the UK with around 6.4 million customers and offers a wide variety of personal charitable and business banking services.

Virgin Money has operated a website at <virginmoney.com> since 1998 where it offers and provides information about its services. A copy of the Whols details and screenshots of the website are exhibited at Annex 8 together with an overview of the history of the company. Details of its business banking services can be found on the business banking webpages at “uk.virginmoney.com/business” copies of which are exhibited at pages 40 to 45 of Annex 8.

Virgin Money has also been operational in Australia since 2003 and operates a website at “virginmoney.com.au”. Copies of the home page and “About Us” webpage are exhibited at Annex 9.

The Virgin Money brand has been widely publicized by its sponsorship of high profile events including, for example, the Virgin Money London Marathon, the last taking place in 2021. At Annex 10 are examples of press coverage of events sponsored by Virgin Money.

Virgin Money has been consistently recognized by third parties for its exceptional services. A list of recent awards is set out in the Complaint including, in 2022, awards from Your Money Personal Finance, Mortgage Finance Gazette and Business Moneyfacts. Copies of awards won between 2015 and 2022 are exhibited at Annex 11.

Annexes 8 to 12 show that the Complainant’s registered trade marks VIRGIN and VIRGIN MONEY are and have been used consistently across all social media and marketing materials to identify the business of Virgin Money.

The Complainant submits that as a result of this high-profile use the Complainant’s marks, all of which pre-date the registration of the disputed domain name on August 7, 2022 have acquired a significant goodwill and reputation. The Complainant has provided evidence showing that the disputed domain name used to resolve to a website prominently displaying a variation of the Complainant’s VIRGIN MONEY logo and VIRGIN signature logo and requesting users’ personal details.

In the absence of a Response the Panel finds the above evidence as adduced by the Complainant to be true.

5. Parties' Contentions

A. Complainant

The Complainant submits:

- i. The disputed domain name consisting of the terms "virgin" and "mm" is confusingly similar to the Complainant's registered marks VIRGIN. The suffix "mm" is an abbreviation for "money market" which is a meaningless, generic addition to the mark VIRGIN.
- ii. On the Complainant's evidence the Respondent has no rights or legitimate interests in respect of the disputed domain name;
- iii. On the evidence the disputed domain name was registered and is used in bad faith for the purpose of confusing Internet users into thinking that there is a connection with the Complainant and its business, to disrupt the Complainant's business, for phishing and fraudulent commercial gain.

B. Respondent

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

6. Discussion and Findings

A. Identical or Confusingly Similar

The Complainant rightly submits that the disputed domain name consists of a combination of the terms "virgin" and "mm". The use of the term "virgin" incorporates the Complainant's registered trade marks VIRGIN.

The addition of the term "mm" after the term "virgin" does not prevent a finding of confusing similarity between the disputed domain name and the mark VIRGIN. Moreover, the mark VIRGIN is "immediately recognizable within the domain name" which does not prevent the domain name from being confusingly similar.

The generic Top-Level Domain ".com" should be disregarded for the purpose of assessing confusing similarity.

The Panel therefore finds that the disputed domain name <virginmm.com> is confusingly similar to the marks VIRGIN within paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

The Complainant relies upon the fact that there is no evidence that the Respondent has used, is using or has made demonstrable preparations to use the disputed domain name in connection with a legitimate business. Nor is there evidence that the Respondent has ever commonly been known by the disputed domain name, or that it has been used in connection with a *bona fide* offering of goods or services.

The Complainant relies upon the evidence contained in Annex 14 to the Complaint which shows that the disputed domain name resolves to a website "virginmm.com" which prominently displays a variation of the Complainant's VIRGIN MONEY logo and VIRGIN signature logo. It also requests personal details of the user. Given the use of the Complainant's trade marks the latter is likely to be for the purposes of gathering sensitive personal data for fraudulent commercial gain.

The Respondent's website includes space for the user to enter a phone number and password in order to log in. It also includes a "forgot password" button and an option to register for an account. When the user clicks either option it is directed to a page where the user is asked to provide its phone number and a password. Screenshots from the website showing this are exhibited at Annex 14 pages 3 to 4. The Complainant confirms that the website is not operated by or connected to the Complainant or Virgin Money. There is no evidence that the Respondent is authorized by the Complainant to use the disputed domain name or the marks VIRGIN or VIRGIN MONEY.

The Complainant submits that the Respondent's use of the disputed domain name and a mark similar to the VIRGIN MONEY logo is intended to suggest a link to Virgin Money and will confuse Internet users into thinking that the disputed domain name is connected to or operated by the Complainant or Virgin Money. This will divert customers from the Complainant's Virgin Money business.

Having considered the Complainant's submissions and the evidence set out in Annex 14 and taking into account the absence of a Response the Panel is satisfied that the Respondent has no rights or legitimate interests in respect of the disputed domain name within paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

The Complainant relies upon the fact that the disputed domain name incorporates marks which are identical or confusingly similar to the Complainant's registered marks in relation to the website "virginmm.com".

It submits that the incorporation of those marks in the disputed domain name is done with the purpose of confusing Internet users into thinking that the disputed domain name and the online login page is operated by or connected to the Complainant or the Virgin Money business. It suspects that the Respondent's alleged service is fake and not legitimate. The evidence supports a finding that the disputed domain name and its log in page were created for phishing purposes and fraudulent commercial gain. The website was set up to deceive the public into providing sensitive and personal information in order to defraud. This constitutes bad faith use.

The selection of the disputed domain name that is confusingly similar to the Complainant's registered marks VIRGIN and VIRGIN MONEY is undoubtedly done with the intention of taking advantage of the significant reputation in those marks in order to drive customers to the "virginmm.com" website. This will be disruptive to the Complainant's Virgin Money business by diverting customers from that business and damaging its reputation.

Taking into account the evidence of the Complainant's significant reputation in its registered trade marks the Panel agrees with the Complainant that it was inconceivable that the Respondent would not have been aware of the Complainant's marks at the date of registration of the disputed domain name.

On the basis of the Complainant's evidence, in the absence of a Response and evidence to the contrary, the Panel is satisfied that the Respondent has intentionally attempted to attract for commercial gain, Internet users to the Respondent's website by creating a likelihood of confusion with the Complainant's registered marks as to the source, sponsorship, affiliation, or endorsement of the Respondent's website. This constitutes registration and use in bad faith within paragraph 4(b)(iv) of the Policy.

The Panel also notes that there is another pending proceeding involving the same parties (*Virgin Enterprises Limited v. Dani Luke*, WIPO Case No. [D2022-3141](#)). The Panel finds that this is further evidence of the Respondent's bad faith.

The Panel finds that the disputed domain name has been registered and is being used in bad faith within 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, <virginmm.com>, be transferred to the Complainant.

/Clive Duncan Thorne/

Clive Duncan Thorne

Sole Panelist

Date: November 7, 2022