

ADMINISTRATIVE PANEL DECISION

Virgin Enterprises Limited v. alpha tech
Case No. D2023-3157

1. The Parties

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

The Respondent is alpha tech, Pakistan.

2. The Domain Name and Registrar

The disputed domain name <virginmobile.store> is registered with Hostinger, UAB (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on July 21, 2023. On July 24, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On July 25, 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 (Domain Admin, Privacy Protect, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on July 25, 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 amended Complaint on July 26, 2023. On the same day, Respondent sent an email communication to the Center.

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 July 27, 2023. In accordance with the Rules, paragraph 5, the due date for Response was August 16, 2023. The Respondent did not submit a formal response. Accordingly, the Center notified the Respondent's default on August 18, 2023.

The Center appointed Gökhan Gökçe as the sole panelist in this matter on August 23, 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.

4. Factual Background

The Complainant is part of the Virgin Group and the owner of the VIRGIN brand and associated trademarks. The Complainant pursues 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 has provided evidence that it is the registered owner of numerous trademarks relating to its company name and brand VIRGIN, including, but not limited to the following:

- UK Trademark Registration No. UK00003163121 for the mark VIRGIN in classes 03, 05, 09, 11, 12, 14, 16, 31, 32, 33, 35, 36, 38, 39, 41, 42, 43, 44, and 45, registered on July 29, 2016.
- European Union ("EU") Trademark Registration No. 1141309 for the mark VIRGIN in classes 09, 35, 36, 38 and 41, registered on May 21, 2012.
- UK Trademark Registration No. UK00002365570 for the mark VIRGIN MOBILE in classes 09, and 38, registered on February 4, 2005.
- EU Trademark Registration No. 014465496 for the mark VIRGIN MOBILE in classes 09, 35, 36, 38, 41, and 42, registered on February 15, 2016.
- UK Trademark Registration No. UK00002429892 for the mark VIRGIN MEDIA in classes 09,35,38, and 41, registered on May 18, 2007

Moreover, the Complainant has operates domain names relating to its VIRGIN trademark, including since 2000 the domain name <virgin.com>, which resolves to the Complainant's official website at "www.virgin.com", promoting the Complainant's business, ventures, and foundations in various industries.

In 1999, the Complainant launched Virgin Mobile Telecoms Limited in the UK, offering telecommunications services under the brand VIRGIN MOBILE. Since 2000, Virgin Mobile services have been launched in numerous other territories, including Australia, Canada, Chile, France, India, Poland, South Africa, United Arab Emirates, and the United States of America, as per Annex 8 of the Complaint.

The disputed domain name <virginmobile.store> was registered on December 22, 2022. At the time of this decision, the disputed domain name does not resolve to an active website.

5. Parties' Contentions

A. Complainant

The Complainant requests the transfer of the disputed domain name.

The Complainant is of the opinion that the disputed domain name is identical or confusingly similar to its VIRGIN and VIRGIN MOBILE trademarks.

The Complainant alleges that the Respondent lacks rights or legitimate interests in the disputed domain name, that, so far as the Complainant is aware, the Respondent is not generally known by the disputed domain name, and the Complainant has not authorized the Respondent to use its VIRGIN MOBILE trademark in connection with registration of a domain name, or otherwise. With the Annex 12 and 13 of the Complaint, the Complainant submitted evidence regarding the fraudulent activity of the Respondent. With this fraudulent activity, the Respondent designed to obtain sensitive financial details from members of the public for illegitimate commercial gain. The Complainant alleges that the Respondent has created the unauthorized email address and used it to offer services that do not exist under the Virgin Media name

without authorization and has copied the Complainant's registered trademarks VIRGIN, Virgin Signature Logo, and VIRGIN MEDIA, strongly indicates that the Respondent lacks any legitimate rights or interest in the disputed domain name.

Finally, The Complainant also indicated that the Respondent has intentionally attempted to attract, for commercial gain, Internet users by creating a likelihood of confusion with the Complainant's registered trademarks as to the source, sponsorship, affiliation, or endorsement of the "www.virginmobile.store" website and the unauthorized email address. The Complainant also argues that the activity outlined in the Complaint, namely, to use the disputed domain name as part of the unauthorized email address to carry out a sophisticated scam to defraud members of the public by claiming to be from Virgin or Virgin Media, is not use of a domain name in good faith.

B. Respondent

The Respondent did not file a formal reply to the Complainant's contentions, having only sent an email communication on July 26, 2023, in which it confirmed the ownership of the disputed domain name.

6. Discussion and Findings

Paragraph 15(a) of the Rules requires the Panel to decide a complaint based on the statements and documents submitted in accordance with the Policy, the Rules and any rules and principles of law that it deems applicable.

Under paragraph 4(a) of the Policy, the Complainant bears the burden of showing:

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

Paragraph 4(a) of the Policy states that 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. *Stanworth Development Limited v. E Net Marketing Ltd.*, WIPO Case No. [D2007-1228](#).

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 [WIPO Overview 3.0](#).

A. Identical or Confusingly Similar

The Panel holds that the disputed domain name is confusingly similar to the Complainant's trademarks.

The Respondent's incorporation of the Complainant's trademarks VIRGIN and VIRGIN MOBILE in full in the disputed domain name is sufficient to establish that the disputed domain name is confusingly similar to the Complainant's trademarks.

The disputed domain name <virginmobile.store> consists of the VIRGIN and VIRGIN MOBILE trademarks followed by the generic Top-Level Domain ("gTLD") ".store". The addition of a gTLD such as ".store" in a domain name is technically required. Thus, it is well established that such element may generally be disregarded when assessing whether a disputed domain name is identical or confusingly similar to a trademark. *Proactiva Medio Ambiente, S.A. v. Proactiva*, WIPO Case No. [D2012-0182](#), *Virgin Enterprises Limited v. Adnan Mohammad / Registration Private, Domains By Proxy, LLC*, WIPO Case No. [D2016-2472](#).

The Panel concludes that the disputed domain name is confusingly similar to the VIRGIN trademark and identical to the VIRGIN MOBILE trademark.

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

B. Rights or Legitimate Interests

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 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 of evidence 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. See *Croatia Airlines d.d. v. Modern Empire Internet Ltd.*, WIPO Case No. [D2003-0455](#). With its Complaint, the Complainant has provided *prima facie* evidence that the Respondent has no rights or legitimate interests, particularly no license or alike to use the Complainant's VIRGIN and VIRGIN MOBILE trademarks in a confusingly similar way within the disputed domain name.

The Complainant has not authorized, licensed, or otherwise permitted the Respondent to use its VIRGIN MOBILE trademark. The Complainant does not have any type of business relationship with the Respondent, nor is the Respondent making a legitimate noncommercial or fair use of the disputed domain name. Instead, the Panel finds that the Respondent was improperly using the disputed domain name for fraudulent activities and thus, has no rights or legitimate interests in the disputed domain name.

The un rebutted claim and evidence in the Complaint that the disputed domain name is being used for phishing at sensitive financial data is sufficient to establish that the Respondent lacks rights or legitimate interests in the disputed domain name. Prior UDRP panels have categorically held that the use of a domain name for illegal activity (e.g., phishing, unauthorized account access/hacking, impersonation/passing off, or other types of fraud) can never confer rights or legitimate interests on a respondent. (see [WIPO Overview 3.0](#), section 2.13).

Therefore, the Panel finds that the Complainant has established element 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

The Panel notes that the Complainant's VIRGIN and VIRGIN MOBILE trademarks substantially predate the Respondent's registration of the disputed domain name. The Respondent's knowledge of the Complainant and its trademarks can be readily inferred from the Respondent's use of the disputed domain name, through which the Respondent has sought to impersonate the Complainant. Given that the use of a domain name for per se illegitimate activity such as phishing can never confer rights or legitimate interests, such behavior is manifestly considered evidence of bad faith; see [WIPO Overview 3.0](#), section 3.1.4. The Panel finds that the Respondent registered the disputed domain name to create a misleading impression of association with the Complainant, with a view to engaging in a fraudulent email scheme targeting the Complainant's customers and customers' information in bad faith.

As such, the Panel is satisfied that by using the disputed domain name, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant's trademark as to the source, sponsorship, affiliation, or endorsement of its website or of the products on its website. Under paragraph 4(b)(iv) of the Policy, this circumstance shall be evidence of the registration and use of a domain name in bad faith. See *Rakuten, Inc. v. Marcos Carrillo, Marcos Carrillo*, WIPO Case No. [D2019-2979](#).

Therefore, the Panel finds that the Complainant has established element 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, <virginmobile.store> be transferred to the Complainant.

/Gökhan Gökçe/

Gökhan Gökçe

Sole Panelist

Date: September 6, 2023