

ADMINISTRATIVE PANEL DECISION

Virgin Enterprises Limited v. Privacy Service Provided by Withheld
for Privacy ehf / Bryan Taylor
Case No. D2022-0327

1. The Parties

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

The Respondent is Privacy Service Provided by Withheld for Privacy ehf, Iceland / Bryan Taylor, India.

2. The Domain Name and Registrar

The disputed domain name <virginatlantic-flights.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 January 31, 2022. On January 31, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On January 31, 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 February 2, 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 amendment to the Complaint on February 3, 2022.

The Center verified that the Complaint together with the amendment to 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 February 8, 2022. In accordance with the Rules, paragraph 5, the due date for Response was February 28, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on March 1, 2022.

The Center appointed Benjamin Fontaine as the sole panelist in this matter on March 7, 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 member of the Virgin group, a United Kingdom-based multinational founded in the 1970's by Sir Richard Branson. It operates in multiple fields, such as telecommunications, health and fitness, leisure and music, and its services are offered under the umbrella brand Virgin.

The Complainant is active in particular in the field of air passenger and cargo transport, under its branch Virgin Atlantic. This airline is mainly based in London and Manchester and it has been in operation for several decades. It enjoys a strong reputation among travelers, in particular for long-haul flights thanks to its modern fleet and the quality of its on-board services. The Complainant has filed with the Complaint significant evidence of the history and reputation of the brand Virgin Atlantic, which is not disputed here.

The Complainant relies in particular on the following trade marks in support of its action:

- European Union Trade Mark registration VIRGIN (word) No. 1798560, filed on August 8, 2000 and registered on June 5, 2022;
- United States trade mark VIRGIN ATLANTIC (word) No. 2808270, filed on March 5, 2003, and registered since January 27, 2004;
- United Kingdom trade mark registration VIRGIN ATLANTIC (word) No. 1287263, filed on October 2, 1986, and registered on April 3, 1992;
- European Union Trade Mark registration VIRGIN ATLANTIC (word) No. 14030589, filed on May 5, 2015, and registered on October 12, 2015.

The disputed domain name was registered on September 14, 2021, using a privacy shield. The identity of the Respondent, an individual with an address in India, was disclosed by the Registrar in the course of this proceeding.

The Complainant has filed with the Complaint several screenshots showing the use made by the Respondent of the disputed domain name. It is necessary here to describe this webpage in detail:

The disputed domain name <virginatlantic-flights.com> resolves to a webpage which displays a search engine of airplane tickets in the "home" main page. The engine contains the usual search criteria for this purpose. The title of the webpage is "To Book New Flights / Make changes & Cancellations In The Existing Flights". It is displayed along the search engine and against the background of the rear of a Boeing 747.

Immediately below follow a number of paragraphs, separated by headlines, such as (coming first, from top to bottom): "Virgin Atlantic Flights", "Virgin Atlantic Reservations", "Cheap flight fares for global destinations- best flight booking site", "Virgin Atlantic Official Site", "Choose your seats early", "Boost your holidays with some extra flight points", etc.

Thereafter popular destinations are displayed, with the corresponding pictures.

A final section of the main page is entitled "Hassle-Free Online Flight Booking Process", and it displays the following text: "Make your Virgin Atlantic Reservations today if you think you need to fly away soon to New York / Las Vegas or any other big cities. Let us help you enjoy a hassle-free online flight booking process from the comfort of your home. We are the best online platform – your ticket to the world. Come avail of our travel services, organize your trips most efficiently. We guarantee you absolute flight fares like no other place. Reach us out by lodging directly to Virgin Atlantic Office site or you can make use of our phone number available on the page. Our customer support is available 24/7 to address your travel requirements."

The home page contains in its last developments a telephone contact, an email address based on the disputed domain name, and the following text, in small font: “we have a team of travel professionals and work as a travel agent for flight ticket booking. Our professionals provide flight deals and vouchers for travelers to make their trips affordable. If any query just call our toll-free number.” On top of this message, in a grey table which is not easily readable, the following message is reproduced as a disclaimer: “We are solely act as an agent, we create connections between travelers and supplies of travel services. We do not own or manage any kind of Travel Services. We don’t declare that we are airlines or are associated with any airlines. Entire branding is authentic for expressive purposes only and does not denote any involvement with any airlines or organization.” The webpage finishes with a copyright claim, “by virgin atlantic flights”.

Finally, it is indicated in the Complaint that “The Virginatlantic-flights.com Website contains incomplete and broken links. On the ‘Destinations and Offers’ page it is not possible to click through to any of the offers, and none of the tabs ‘Refund Policy’, ‘Disclaimer’, ‘Privacy Policy’ or ‘Terms & Conditions’ work”.

5. Parties’ Contentions

A. Complainant

The arguments of the Complainant can be summarized as follows:

On the first element of the Policy, the Complainant highlights that the disputed domain name incorporates the Complainant’s registered trade marks VIRGIN and VIRGIN ATLANTIC. They are followed by the word “flights”, which is clearly descriptive of the Complainant’s activities.

On the second element of the Policy, the Complainant indicates that the Respondent is making use of its trade marks VIRGIN and VIRGIN ATLANTIC without any authorization, to offer identical services. The Complainant further states that “The prominent and frequent use of marks identical and highly similar to the Complainant’s Registered Marks throughout the homepage and the webpages of the Virginatlanticflights.com Website will clearly confuse Internet users searching and seeking to purchase tickets for flights provided by Virgin Atlantic into believing that that the same is a booking service provided by, directly connected to or endorsed by the Complainant or Virgin Atlantic, when that is not the case. Use of text on the Virginatlantic-flights.com Website such as ‘Virgin Atlantic Official Site’ will exacerbate this confusion”. The Complainant also points out several examples of oddly worded sentences and use of poor English in the webpage hosted under the disputed domain name. The Complainant indicates also that, apparently, the business address displayed on the webpage of the Respondent does not correspond to any real travel agency. Based on these elements, the Complainant claims therefore that the Respondent is not making a legitimate and *bone fide* offer of services under the disputed domain name.

Also, the Complainant claims that the use of the disputed domain name does not comply with the “Oki Data test”. It states in particular that it “does not make clear in a prominent and accurate manner to Internet users that the Respondent is not directly associated with the Complainant or Virgin Atlantic”.

On the third element of the Policy, the Complainant indicates that consumers will be led to believe that the disputed domain name hosts a website which is operated by it, or connected to it. The Complainant suspects that the disputed domain name might be used eventually to acquire personal details from potential customers, for fraudulent purposes. The Complaint also mentions the confusion that arises to the detriment of the consumers, as well as the possible adverse negative effects on the reputation of the brand VIRGIN ATLANTIC.

B. Respondent

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

6. Discussion and Findings

Paragraph 4(a) of the Policy requires that the Complainant prove all of the following three elements in order to be successful in these proceedings:

- (i) the disputed domain name is identical or confusingly similar to a trade mark 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 was registered and is being used in bad faith.

A. Identical or Confusingly Similar

The Complainant, under the first requirement of paragraph 4(a) of the Policy, needs to establish that the disputed domain name is identical or confusingly similar to a trade mark or a service mark in which it has rights.

The Complainant has shown in particular that it holds rights over the trade marks VIRGIN ATLANTIC.

The disputed domain name <virginatlantic-flights.com> includes the Complainant's trade mark in its entirety, in first position, combined with the term "flights", inserted after a hyphen. In this combination, the trade mark VIRGIN ATLANTIC is immediately perceivable. The addition of the element "flights" does not prevent the Complainant's trade mark from being recognizable in the disputed domain name. See section 1.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"): "Where the relevant trade mark is recognizable within the disputed domain names, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element. The nature of such additional term(s) may however bear on assessment of the second and third elements."

As the disputed domain name includes the Complainant's trade mark in its entirety combined with a term that does not prevent the Complainant's trade mark from being recognizable in the disputed domain name, the Panel finds that the disputed domain name is confusingly similar to the Complainant's trade mark.

Therefore, the first element of the Policy is satisfied.

B. Rights or Legitimate Interests

It is necessary here to address the issue of whether the use of the disputed domain name, by a travel agent, can be qualified as legitimate.

Section 2.8.1 of [WIPO Overview 3.0](#) indicates that "Panels have recognized that resellers, distributors, or service providers using a domain name containing the complainant's trademark to undertake sales or repairs related to the complainant's goods or services may be making a *bona fide* offering of goods and services and thus have a legitimate interest in such domain name. Outlined in the 'Oki Data test', the following cumulative requirements will be applied in the specific conditions of a UDRP case:

- (i) the respondent must actually be offering the goods or services at issue;
- (ii) the respondent must use the site to sell only the trademarked goods or services;
- (iii) the site must accurately and prominently disclose the registrant's relationship with the trademark holder; and
- (iv) the respondent must not try to 'corner the market' in domain names that reflect the trademark.

The Oki Data test does not apply where any prior agreement, express or otherwise, between the parties expressly prohibits (or allows) the registration or use of domain names incorporating the complainant's trademark".

Also, section of [WIPO Overview 3.0](#) adds that "Cases applying the Oki Data test usually involve a domain

name comprising a trademark plus a descriptive term (e.g., 'parts', 'repairs', or 'location'), whether at the second-level or the top-level. At the same time, the risk of misrepresentation has led panels to find that a respondent lacks rights or legitimate interests in cases involving a domain name identical to the complainant's trademark".

The Panel notes the Complainant's references to the decision in *Oki Data Americas, Inc. v. ASD, Inc.*, WIPO Case No. [D2001-0903](#) (regarding the "Oki Data test"), and the Panel deems necessary to review all the conditions of the "Oki Data test" in this case:

- First, the Complainant is certainly right to highlight that apparently several links do not function. It might be, therefore, that the Respondent is making a superficial, or even artificial, offer of travel agency services. However, the Panel cannot fully rule-out that the Respondent is indeed in the business of travel agent services. Therefore, the case will proceed on the assumption that the first element of the test is satisfied.
- Second, it is unclear whether the Respondent solely offers plane tickets or trips solely linked to the Complainant's trade mark, or if these tickets can be effectively purchased via the website at the disputed domain name (particularly noting that some of the links apparently do not function). With this, and failing any contrary indication from the Respondent, it appears that the second element of the test is not satisfied.
- Third, the webpage of the Respondent does not indicate clearly, promptly or accurately the relationship between the Respondent's activity and the Complainant's trade mark. As explained in the description of the facts, the Respondent has solely inserted a disclaimer at the very bottom of its webpage, in a small font against a grey background which makes it difficult to notice. This disclaimer is hardly noticeable and cannot fulfil this test. On the contrary, the global layout of the webpage, with titles such as "Virgin Atlantic Official Site", rule out any possible accurate disclosure on the nature of the relationship between the Respondent and the Complainant. Therefore, the third element of the test fails.
- Finally, the Panel notes that there is no evidence in the file that the Respondent is attempting to "corner the market in domain names that reflect the trade mark" of the Complainant.

To conclude, the "Oki Data Test" fails in two elements here: those of the use of the disputed domain name exclusively in connection with the real offering of services connected to the Complainant operated flights, and of the lack of an accurate disclosure of the Respondent's relationship with the trade mark holder.

In addition, the Panel finds that the disputed domain name carries a risk of implied affiliation with the Complainant. Section 2.5.1 of the [WIPO Overview 3.0](#).

For this reason, the second element of the Policy is deemed to be satisfied.

C. Registered and Used in Bad Faith

In order to prevail under the third element of paragraph 4(a) of the Policy, the Complainant must demonstrate that the disputed domain name was registered and is being used in bad faith.

Paragraph 4(b) of the Policy lists a number of circumstances, which, without limitation, are deemed to be evidence of the registration and use of a domain name in bad faith. These are:

- (i) circumstances indicating that [a respondent has] registered or acquired a disputed domain name primarily for the purpose of selling, renting, or otherwise transferring the disputed domain name to the complainant or to a competitor of the complainant, for valuable consideration in excess of [the respondent's] documented out-of-pocket costs directly related to the disputed domain name; or
- (ii) [the respondent has] registered the disputed domain name in order to prevent the complainant from reflecting the complainant's trade mark or service mark in a corresponding domain name, provided that [the respondent has] engaged in a pattern of such conduct; or

(iii) [the respondent has] registered the disputed domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the disputed domain name, [the respondent has] intentionally attempted to attract, for commercial gain, Internet users to [the respondent's] website or other online location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of [the respondent's] website or location or of a product or service on [the respondent's] website or location.

Clearly, the Respondent has primarily registered the disputed domain name, and is using it, with the intention to attract as many users as possible to its website. The disputed domain name is likely to feed users to its business, thanks to the attractiveness of the well-known brand VIRGIN ATLANTIC of the Complainant. The disputed domain name was chosen unfairly to take advantage of the Complainant's goodwill by creating a likelihood of confusion with the Complainant's trade mark, misleading Internet users as to a business connection between the disputed domain name and the Complainant's trademark.

While the final intentions of the Respondent are not clear - either conducting phishing activities, or generating traffic to provide the services of a travel agency -, the finding is the same: the Respondent has registered and is using the domain name in bad faith.

Accordingly, the third and final element of the Policy is deemed to be satisfied.

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 <virginatlantic-flights.com> be transferred to the Complainant.

/Benjamin Fontaine/

Benjamin Fontaine

Sole Panelist

Date: March 21, 2022