

## **ADMINISTRATIVE PANEL DECISION**

Virgin Enterprises Limited v. Obi Frank  
Case No. D2023-0080

### **1. The Parties**

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

The Respondent is Obi Frank, United Arab Emirates.

### **2. The Domain Name and Registrar**

The disputed domain name <virginihotels.com> is registered with 1API GmbH (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on January 6, 2023. On January 9, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On January 10, 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 and contact information in the Complaint. The Center sent an email communication to the Complainant on January 10, 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 January 11, 2023.

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 January 25, 2023. In accordance with the Rules, paragraph 5, the due date for Response was February 14, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on February 17, 2023.

The Center appointed Ezgi Baklacı Gülkökar as the sole panelist in this matter on March 8, 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 Virgin Enterprises Limited is part of the Virgin Group, and is the owner of the VIRGIN and VIRGIN HOTELS trademarks which were originally established by the founder of the company and are now used in a diverse range of sectors including media, media, travel and leisure. The Complainant is responsible for registering, maintaining and licensing registrations for VIRGIN trademarks.

The Complainant's trademark is also used for hotel services. VIRGIN HOTEL was first announced in the United States of America ("USA") in 2011, and first VIRGIN HOTEL was opened in 2014 in USA. The Complainant has Virgin hotels in USA and UK.

The Complainant holds many trademark registrations in the United States and worldwide for its VIRGIN and VIRGIN HOTELS marks, including for example, European Union Registration No. 1798560 for VIRGIN in classes 9 and 39 filed on August 8, 2000; US Registration No. 4865666 for VIRGIN HOTELS in class 43 filed on January 15, 2016, and UK Registration No. 3423222 for VIRGIN HOTELS in classes 41 and 43 filed on August 22, 2019.

The Complainant is also the owner of various domain names and social media accounts including its VIRGIN trademark including the domain name <virginhotels.com>.

The disputed domain name was registered on December 7, 2022. The disputed domain name resolves to a website copying the content from the website belonging to the Complainant.

#### **5. Parties' Contentions**

##### **A. Complainant**

The Complainant contends that each of the three elements specified in paragraph 4(a) of the Policy is satisfied in the present case, as follows:

The Complainant argues that the disputed domain name is confusingly similar to the Complainant's registered VIRGIN and VIRGIN HOTELS trademarks because it comprised of the terms "virgin", and "hotels" separated by the letter "i" which is a common prefix referring to the "Internet" or something that is online or interactive; or an element which can be overlooked by the Internet users.

The Complainant argues that the Respondent has no rights or legitimate interests in the disputed domain name. Further, the Complainant submits that the Respondent is not authorized to use the Complainant's trademark.

The Complainant argues that the disputed domain name resolves to a website that copies the Respondent's website "virginhotels.com". The Complainant argues that the screenshots provided at Annex 12 to the Complaint shows that the Respondent used the registered trademark and logos of the Complainant and copied images and texts from the Complainant's website. Further, the Complainant argues that the homepage of the disputed domain name allows the visitors to go through the steps of selecting a date and type of room but then resolves to the Complainant's own web address according to the screenshots provided at Annex 8 to the Complaint. The Complainant contends that the Respondent's use is not a fair or legitimate use of the disputed domain name in connection with a *bona fide* offering of goods or services.

Further, the Respondent has no rights to the Complainant's registered trademarks VIRGIN or VIRGIN HOTELS and no evidence submitted by the Respondent that the mark has ever been commonly known by the Respondent.

The disputed domain name was registered and used in bad faith. The Complainant argues that the disputed domain name resolves to a website which copies text and images of the Complainant's website

“virginhotels.com”, reproduces the Complainant’s trademarks VIRGIN and VIRGIN HOTELS without authorisation, and purports to provide booking services relating to the Complainant’s services to deceive consumers. Further, the Complainant argues that the website that the disputed domain name resolves provides a contact email address [...]@virginihotels.com. Such email address is likely to be used for phishing purposes, that is to obtain personal details of members of the public for fraudulent commercial gain. The Complainant contends that such use cannot be considered in good faith.

In summary, the Complainant asserts that it has established all three elements required under paragraph 4(a) of the Policy for a transfer of the disputed domain name.

## **B. Respondent**

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

## **6. Discussion and Findings**

In accordance with paragraph 4(a) of the Policy, the Complainant must prove that each of the three following elements is satisfied:

- (i) the disputed domain name is identical or confusingly similar to the trademarks or service marks 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.

### **A. Identical or Confusingly Similar**

The Complainant has demonstrated that it has well-established rights in its well-known VIRGIN trademarks. Further, the Complainant holds the trademark VIRGIN HOTELS as well as the domain <virginhotels.com> according to the extracts submitted within Annex 4A, 4B and 8 to the Complaint.

The disputed domain name consists of the registered trademark VIRGIN HOTELS with an additional letter “i” between “virgin” and “hotels”. However, the Complainant’s trademark is clearly recognizable within the disputed domain name. The Panel finds that the disputed domain name is confusingly similar to the Complainant’s registered trademark (WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), section 1.7).

Thus, the Panel concludes that the disputed domain name is confusingly similar to the VIRGIN HOTELS trademark.

The Panel is in the view that the disputed domain is confusingly similar to the Complainant’s trademarks and the first element of paragraph 4(a) of the Policy is satisfied.

### **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 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 often impossible 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. 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).

The Panel notes that there is no evidence showing that the Respondent holds any right for VIRGIN or VIRGIN HOTELS trademarks. The Panel also notes that there is no evidence showing that the Respondent is authorized or licensed to use trademarks VIRGIN or VIRGIN HOTELS.

The disputed domain name resolves to an almost identical website copying the content from website belonging to the Complainant. The Panel notes that there are substantial similarities between the website to which the disputed domain name resolves and the Complainant's website at "www.virginhotels.com". These include the exact duplication of the registered VIRGIN and VIRGIN HOTELS trademarks and logos, exact copying of the images, and the copying of the text in the Complainant's website according to the screenshots provided at Annex 8 to the Complaint.

Panel also notes that the disputed domain name allows the visitors to go through the steps of selecting a date and type of room and when clicked further the disputed domain name then resolves to the Complainant's own web address according to the screenshots provided at Annex 8 to the Complaint. The Panel is of the view that this in itself shows that the Respondent is aware of the Complainant and its website.

The Panel finds that use of the disputed domain cannot amount to a *bona fide* offering of goods and services or a legitimate noncommercial or fair use.

Therefore, the Panel finds that the Respondent does not have rights or any legitimate interests in the disputed domain name within the meaning of Policy, paragraph 4(a)(ii).

### **C. Registered and Used in Bad Faith**

Paragraph 4(a)(iii) of the Policy provides that a complainant must demonstrate that the disputed domain name has been registered and is being used in bad faith. Bad faith under the UDRP is broadly understood to occur where a respondent takes unfair advantage of or otherwise abuses a complainant's trademark ([WIPO Overview 3.0](#), section 3.1).

The Panel finds that at the time the disputed domain name was registered the Respondent was aware of the trademarks VIRGIN and VIRGIN HOTELS as the Complainant's trademark registrations as well as its domain names predate the registration date of the disputed domain name. The Respondent knew about the Complainant's rights.

The Panel notes that copying the content of the Complainant's website under the disputed domain name which is also confusingly similar to the Complainant's trademark and also domain name, and further directing to the Complainant's official website, is an indication to attract for commercial gain Internet users to the disputed domain name by creating a likelihood of confusion with the Complainant's trademarks as to the source, sponsorship, affiliation, or endorsement of the disputed domain name. Former UDRP panels found that in cases where a respondent directing the domain name to the complainant's (or a competitor's) website as a sign that the respondent has registered a domain name to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the complainant's mark ([WIPO Overview 3.0](#), section 3.1.4). See also *Syngenta Participations AG / Maksim Ivanov*, WIPO Case No. [D2016-0310](#).

In the circumstances, the Panel finds that the Respondent registered and is using the disputed domain name in bad faith, and paragraph 4(a)(iii) of the Policy has been 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 <virginihotels.com> be transferred to the Complainant.

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**Ezgi Baklaci Güلكokar**

Sole Panelist

Date: March 13, 2023