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IN-DL15767044048810V

INDRP ARBITRATION

THE NATIONAL INTERNET EXCHANGE OF INDIA [NIXI]

ADMINISTRATIVE PANEL DECISION

SOLE ARBITRATOR: SUDHIR KUMAR SENGAR

Virgin Enterprises Limited

Vs

Alex William

ARBITRATION AWARD Disputed Domain Name: <VIRGINVOYAGES.IN>

*[Signature]*

Statutory Alert:

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2. The onus of checking the legitimacy is on the users of the certificate.
3. In case of any discrepancy please inform the Competent Authority.



## 1. The Parties

The Complainants in this administrative proceeding are Virgin Enterprises Limited, 66 Porchester Road, London, United Kingdom W2 6ET (VEL). The Complainants are represented by Anand & Anand , First Channel, Plot No.17A, Sector 16A, Film City, Noida. (Email: safir@anandandanand.com, Phone: 91-120-4059300). The Respondent is Alex William , East Freedom, PA 16637, East Freedom Pennsylvania 16637 US (Email: harryboy881040@gmail.com, phone: 91.972672796 )

## 2. Domain Name and Registrar

- (i) The disputed domain name is <virginvoyages.in>.
- (ii) The Registrar with whom the domain name is registered is Endurance Digital Domain Technology LLP, HD-016, WeWork Nesco IT Park, Building 4, Nesco IT Park Western, Express Highway, Goregaon (East) Goregaon East Goregaon East, Mumbai Maharashtra 400063. (email:compliance@edtpl.com)

## 3. Procedural History

The arbitration proceedings is in accordance with the .IN Domain Name Dispute Resolution Policy (the policy) adopted by National Internet Exchange of India ("NIXI") and INDRP Rules of Procedure ("the Rules") which were approved on June 28, 2005 in accordance with the Indian Arbitration and Conciliation Act, 1996. By registering disputed domain name with a NIXI registrar, the respondent agreed to the resolution of disputes pursuant to the Policy and the Rules.

As per the information received from NIXI, the history of the proceedings is as follows:

On December 04, 2023, I submitted the statement of my Acceptance and Declaration of Impartiality and independence, as required by NIXI to ensure compliance with Paragraph 6 of Rules. NIXI notified the parties of my appointment as Arbitrator via email on December 04, 2023 and served an electronic copy of the complaint on the Respondent. I informed the Parties about commencement of arbitration proceedings on December 04, 2023 and the Respondent was directed to submit his response to the arbitration notice within 7 (Seven) days. The Respondent failed to submit any response to the arbitration notice issued through email dated 04.12.2023 within the stipulated





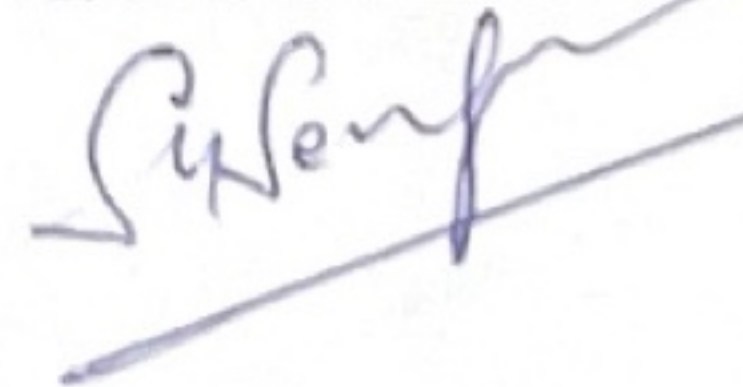
time. The Respondent was given another 5 (Five) days, through email dated 12.12.2023, more time to submit his response to the arbitration notice. The Complainant also failed to submit the proof of delivery of complaint to the Respondent by email/courier. The Complainant through email dated 12.12.2023, was given another 3 (three) days' time to submit the proof of delivery of complaint to the Respondent. The Complainant submitted proof of delivery of complaint to the Respondent through email. The Complainant submitted that the Respondent could not be served hard copy of complainant through courier due to incomplete address of the respondent. The Complainant submitted the service of complaint to the Respondent could not be sent due to unserviceable address. The Complainant's submission of proof of delivery of complaint to the Respondent is accepted. The Respondent failed to submit any response to the arbitration notice issued through email dated 04.12.2023 even within the extended timeline. The Respondent in fact has not submitted any response to the arbitration notice till date.

#### **4. Grounds for Administrative Proceedings**

1. The disputed domain name is identical to trading style and trade name in which Complainant has rights
2. The Respondent has no rights or legitimate interests in the disputed domain name.
3. The domain name was registered and is being used in bad faith.

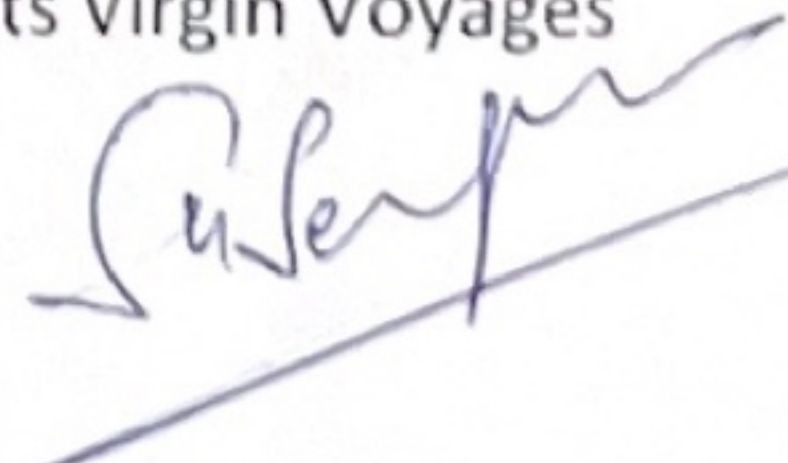
#### **5. Background of the Complainants**

The Complainant Virgin Enterprises Limited is part of the Virgin Group and is the owner of the VIRGIN brand and associated trademarks. The Complainant submitted that 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 Virgin name and since then, operations have grown significantly and now VIRGIN branded businesses 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. The Complainant further submitted that there are currently 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 further submitted that the historic timeline of the Virgin Group is provided on the website [www.virgin.com](http://www.virgin.com). The Complainant further submitted



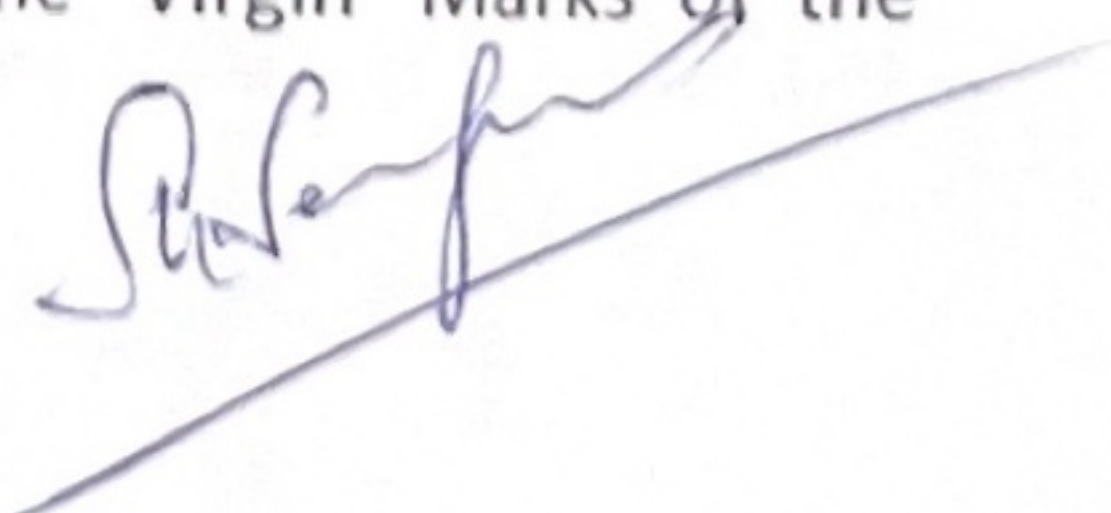


that the Complainant is responsible for registering and maintaining registrations for trademarks containing the VIRGIN name and VIRGIN signature logo and licensing these rights to the VIRGIN businesses. The Complainant further submitted that the Complainant owns a substantial portfolio of approximately 3,500 trade mark applications and registrations in over 150 countries covering the majority of the 45 nice classes of goods and services. The Complainant further submitted that the VIRGIN name and VIRGIN signature logo have all been consistently and intensively used across all VIRGIN operations since the company was founded. The Complainant further submitted that the VIRGIN businesses, ventures and foundations are branded with marks incorporating the distinctive VIRGIN name or VIRGIN signature logo, for example, Virgin Voyages, Virgin Atlantic, Virgin Active, Virgin Money, Virgin Media. The Complainant further submitted copy of a webpage from [www.virgin.com](http://www.virgin.com) that lists the VIRGIN businesses and charitable ventures under their respective VIRGIN and VIRGIN signature logo marks and includes links to the websites of those. The Complainant further submitted that through its activities and those of its licensees, the Complainant has built up a considerable online presence and is the registered proprietor of over 5000 domain names consisting of or incorporating the VIRGIN mark. The Complainant further submitted that the Complainant has operated a website at [www.virgin.com](http://www.virgin.com) since 2000 to promote the activities of the VIRGIN Group and its businesses, ventures, and foundations (the "Virgin.com Website"). The Complainant further submitted that each of the Virgin businesses has its own website. The Complainant further submitted that the VIRGIN businesses also operate pages on various social media platforms where the VIRGIN marks also feature prominently and collectively these social media platforms receive over 37 million views each year. The Complainant further submitted that this considerable online public following serves to demonstrate the widespread exposure of the VIRGIN brand to people all over the world and its significant global reputation. The Complainant further submitted the screenshots of the Instagram profile run by the Virgin Group as well as examples of some of the profiles and accounts on Instagram and Twitter operated by the VIRGIN businesses. The Complainant further submitted that in 2014, the Complainant announced the formation of a new cruise line company Virgin Voyages aimed at providing a new experience of cruise holidays targeted at a young demographic and this cruise line is operated by the company Virgin Cruises Intermediate Limited and trades under licence from the Complainant as Virgin Voyages. The Complainant further submitted that company Virgin Voyages operates website hosted on domain <[virginvoyages.com](http://virginvoyages.com)>. The Complainant further submitted that in 2016, Virgin Voyages announced its ambitious and high-profile plans for its Virgin Voyages

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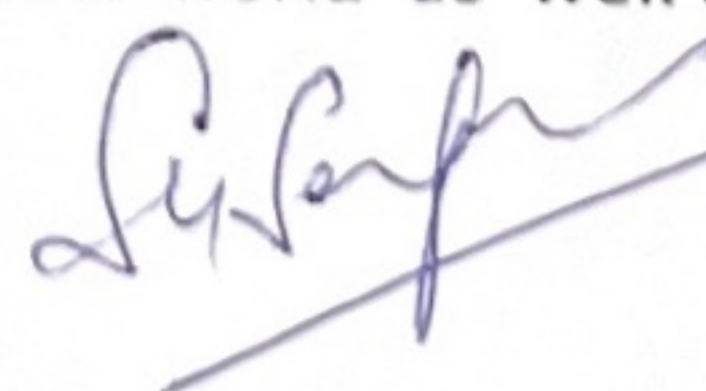


cruise line as well as its intended launch of three new ships. The Complainant further submitted that the Virgin Voyages sailings were planned for 2020 , however these were delayed by the Covid-19 pandemic. The Complainant further submitted that in 2021, Virgin Voyages was able to launch its first sailings from the UK and subsequently commenced further sailings from Miami and Barcelona. The Complainant further submitted that currently, the Virgin Voyages cruise line consists of four ships visiting several destinations, including locations in the Caribbean, Spain, Greece, USA, Australia and New Zealand and these announcements by Virgin Voyages resulted in significant global media attention in relation to these services. The Complainant further submitted that the Virgin Voyages business operates a website at [virginvoyages.com](http://virginvoyages.com) (the "Virgin Voyages Website") as well as dedicated social media pages on Facebook, Twitter, Instagram, TikTok, and YouTube . The Complainant further submitted that the Virgin Voyages business has won numerous awards in the field of cruise lines and holiday services and recent awards include in 2023- Cruise Critic US Cruisers' Choice Awards- Best Overall Cruise Line , Cruise Critic US Cruisers' Choice Awards- Best Dining , Cruise Critic US Cruisers' Choice Awards- Best Service , Cruise Critic US Cruisers' Choice Awards- Best Cabins , Cruise Critic US Cruisers' Choice Awards- Best Value for Money , in 2022: Travel Weekly Magellan Awards- Gold Award Winner; Eco-Friendly "Sustainable" Cruise Ship , Readers Choice Awards- Best Ocean Cruise Line Experience, in 2021: Cruise Critic Editors' Picks- Best New Cruise Ship 2021 (Scarlet Lady). The Complainant further submitted that the Complainant's Registered Marks VIRGIN, the Virgin Signature Logo, VIRGIN VOYAGES and the Virgin Voyages Logo are used prominently and consistently throughout the Virgin Voyages Website and the Virgin Voyages social media feeds and by virtue of this use have acquired a significant reputation and goodwill in respect of cruise lines and holiday services. The Complainant further submitted that the Complainant is the proprietor of the trademark and trade name VIRGIN, along with the Virgin signature logo and other VIRGIN formative marks including VIRGIN VOYAGES. The Complainant further submitted that the Complainant's portfolio of applications and registrations for the Virgin Marks cover a wide variety of goods and services that reflect the diversity of the Complainant's licensees worldwide business interests. The Complainant further submitted that the Virgin Group first adopted the trademark and trade name VIRGIN in at least the year 1970 and the trademark VIRGIN was first registered by the Virgin Group on April 11, 1973 in the United Kingdom. The Complainant further submitted that another stylized form of the VIRGIN mark, the Virgin Signature logo/ was then registered by the Virgin Group as a trademark on September 18, 1979 in the United Kingdom. The Complainant further submitted that the Virgin Marks of the





Complainant are unique marks that are used by the Virgin Group companies to which they are licensed (the "Complainant's licensees") in relation to the goods and services offered by them and are by nature inherently and prima facie distinctive of the goods and services of those companies. The Complainant further submitted that by reason of their use by the Complainant and the Complainant's licensees, the Virgin Marks of the Complainant are vested with the highest degree of protection afforded to a trade mark and any subsequent adoption or use of an identical or deceptively similar mark would be blatantly contrary to law and the protection afforded to such marks. The Complainant further submitted that the Complainant has spent huge amounts in promoting and advertising the Virgin Marks and due to such promotional and advertisement expenditure incurred by the Complainant, the Virgin Marks of the Complainant have attained immeasurable goodwill and reputation in the said market. The Complainant has submitted copies of the promotional materials and advertisements circulated by the Complainant. The Complainant further submitted that as a result of such expenditure and promotional activities undertaken by the Complainant's licensees the Virgin Group has achieved an incredible turnover and licensing income. The Complainant further submitted that in 2021, the annual revenue for Virgin Holdings Limited, (a UK parent company of the Complainant and top UK Company in the Virgin Group) was £116m including licensing revenue of £61m. The Complainant further submitted that in 2020 the top UK company in the Virgin Group and a UK parent company of the Complainant was VUKH Limited Group) was £352m including £59m of revenue for brand licensing. The Complainant further submitted that in 2019, prior to the COVID-19 pandemic, the turnover of the wider Virgin Group (including licensees) was in excess of £16 billion. The Complainant further submitted that as a result of the use made of the Virgin Marks by the Complainant's licensees including promotional and advertising activities, the Complainant has acquired strong common law rights in the said marks. The Complainant further submitted that the value of the marks can be further ascribed from the fact that a search conducted on the internet for VIRGIN throws up a substantial number of hits attributable to the Complainant and the Complainant's licensees exclusively. The Complainant further submitted that such a high number of hits are additionally demonstrative of the popularity of the products and services of the Complainant and their licensees under the Virgin Marks and the well-known character enjoyed by the said marks. The Complainant further submitted that the Complainant's products and services under the Virgin Marks are listed on the website <https://www.virgin.com/> which further elaborates the prominent presence of the Virgin Marks in the virtual world as well and





moreover, the Complainant's website draws third highest traffic from India, thus evidencing immense reputation and goodwill of the VIRGIN marks in India. The Complainant further submitted that since, as the Internet is accessible across the world including in India, the knowledge and awareness of the Complainant's afore-mentioned products and services under the Virgin Marks is a foregone conclusion. The Complainant further submitted that the Complainant is the registered proprietor of all the Virgin Marks used by its licensees In India, the Complainant is the registered proprietor of the following registrations:

S. No.	Regn. No.	Class	Regn. Date	Trademark	Status
1.	638139	33	24.08.1994	VIRGIN	Registered
2.	638140	33	25.08.1994	Virgin	Registered
3.	638137	32	25.08.1994	VIRGIN	Registered
4.	1290574	39, 41, 43	03.02.2015	VIRGIN	Registered
5.	4089323	32	15.2.2019	VIRGIN	Registered
6.	IRDI-3364270 (IR No. 1302486) 39, 41 & 43 23.09.2015 VIRGIN.				

The Complainant submitted the copies of the relevant registration certificates for the afore-mentioned marks. The Complainant further submitted that the Complainant has expanded in various facets of industry and have currently over 60+ business running across the world. The Complainant further submitted that with specific reference to class 43, the Complainant has varied businesses operative, falling under the specified class, worldwide including but not limited to Virgin Voyages, Virgin Hotels, Virgin Experience days, Virgin Trains, Virgin Australia and Virgin Atlantic among others. The Complainant further submitted that it is also emphasized that the trademark and trade name VIRGIN of the Complainant has been bestowed the status of a well-known mark in India by the Hon'ble High Court of Delhi, in the cases of Virgin Enterprises Ltd. & Anr. V. Virgin Paradise Airlines Training Pvt. Ltd. & Ors., CS (OS) No.734 of 2013 and Virgin Enterprises Ltd. & Anr. V. Virgin Foods & Feeds Pvt. Ltd. & Ors., CS (OS) 2594/2015 and many other court matters. The Complainant further submitted that the trademark and trade name VIRGIN of the Complainant has also been included in the list of well-known trademarks by the Trademarks Registry and thus, due to the well-known status of the VIRGIN marks, the trademarks of the Complainant are entitled to be protected across all classes of goods and services. The Complainant further



submitted that in light of the facts and circumstances above mentioned, and the uniqueness in adoption and long and continuous use of the Virgin Marks have led to the exclusive association of the said marks with the Complainant. The Complainant further submitted that the use of the Virgin Marks or any other identical or deceptively similar mark by any other trader, not connected to Complainant, in respect of any goods/services, is bound to cause confusion and deception in the minds of the consumers and members of the trade leading to a false belief that such third party goods or services originate from the Complainant or that they have some trade connections or affiliations with the Complainant. The Complainant further submitted that above would also amount to dilution, erosion and tarnishment of the distinctive character of the Complainant's Virgin Marks.

### **The Respondent**

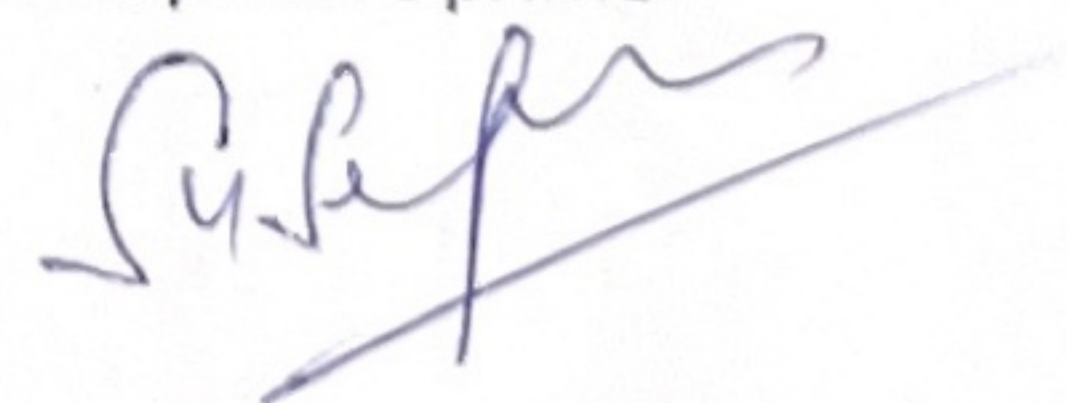
The Respondent is The Respondent is Alex William , East Freedom, PA 16637, East Freedom Pennsylvania 16637 US ( Email:harryboy881040@gmail.com, phone: 91--972672796 ).The Respondent has registered the domain name <VIRGINVOYAGES.IN> on August 11, 2023 which incorporates in its entirety the Complainant's mark VIRGIN VOYAGES.

### **6. Legal Grounds**

A. The domain name <virginvoyages.in> is identical similar to trade mark or trading style in which the Complainant has rights.

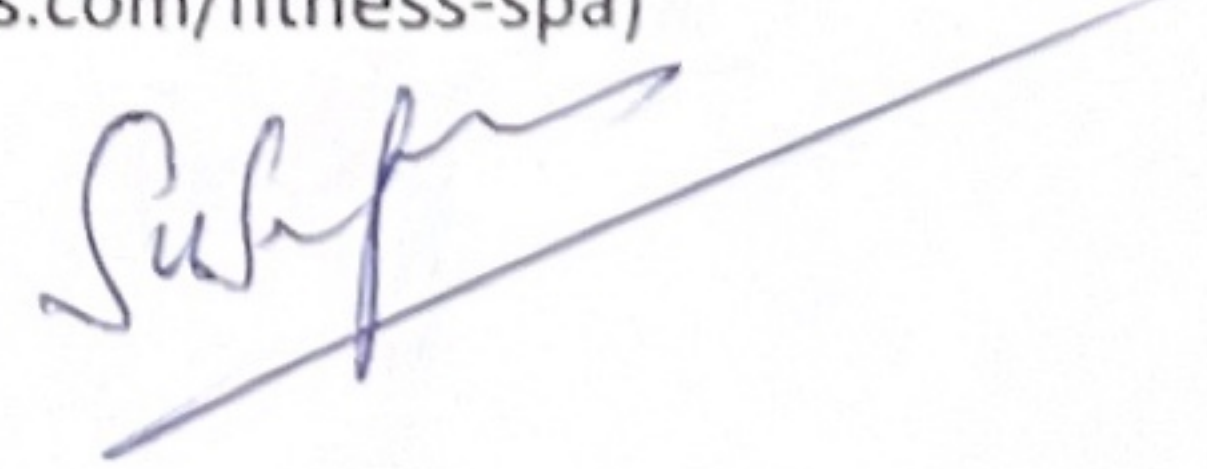
#### **Complainant's Contentions**

The Complainant contended that the Respondent's domain name is identical to the trading style and trademark in which the Complainant has prior rights. The Complainant further contended that it is also pertinent to note that the Complainant already has a domain name as virginvoyages.com and many other country specific domain names and thus the consumers and the members of the trade would get confused that the impugned domain name also belongs to the Complainant and is its India specific domain name. The Complainant further contended that the Respondent's domain name incorporates in its entirety the reputed mark VIRGIN VOYAGES of the Complainant in which the Complainant has statutory rights as well as rights under common law. The Complainant further contended that the impugned domain name attempts to associate itself to the Complainant's business under the mark VIRGIN VOYAGES by incorporating the name of the business in full , thereby causing loss of the Complaint's prime





domain name. The Complainant further contended that that the Complainant has spent several years building up "search engine trust" in a domain and the malicious intention of the Respondent is evident from the blatant misappropriation of the Complainant's trade mark VIRGIN VOYAGES. The Complainant further contended that the addition of the country code ".in" (INDIA) to the Complainant's trademark VIRGIN VOYAGES makes the resulting domain name <VIRGINVOYAGES.IN> confusingly similar to the Complainant's trademark and its domain name <https://www.virginvoyages.com/>, thereby diluting the trademark & of the Complainant and causing harm to its reputation. The Complainant has relied on SAS Institute Inc. v. Farzad Bahreini, FA0207000115038 (Nat. Arb. Forum, August 26, 2001) in which domain name held confusingly similar to mark SAS INSTITUTE; panel held that the addition of a top level country-code such as ".us" does not create a distinct mark capable of overcoming a claim of identical or confusing similarity. The Complainant further contended that the incorporating of a trademark in its entirety (and with no additional words) in a domain name is sufficient in establishing confusing similarity as stated by numerous INDRP decisions such as Taco Bell Co. vs. West Masters Casino. The Complainant further contended that it is apparent that the Respondent's domain name wholly contains the Complainant's trademark VIRGIN VOYAGES and is identical to the trademark in which the Complainant has statutory rights as well as common law rights and such unauthorized use of Complainant's domain name by the Respondent amounts to fraud that is done to the faithful customers of the Complainant. The Complainant further contended that the Internet user or the general public who do not know that the Complainant and the Respondent have no affiliation with each other or that the Complainant has not licensed or authorized or endorsed the use of its reputed and protected mark VIRGIN VOYAGES will thus confuse the Respondent's activities as those authorized or endorsed or affiliated with the Complainant which would lead to the dilution of the Complainant trademarks. The Complainant further contended that the Respondent's website mimics the official Virgin Voyages website of the Complainant i.e. <https://www.virginvoyages.com/> and this website is not operated by the Complainant and is clearly being used for phishing purposes in some kind of recruitment scam due to the following: (i) The website includes an additional heading at the top of the page that indicates "CAREERS & JOB"; (ii) Under the subheading "Careers & Job", there is a page <https://virginvoyages.in/www.virginvoyages.com/www.virginvoyages.com/fitness-spa.html> which copies the official website's Fitness & Spa page [www.virginvoyages.com/fitness-spa](http://www.virginvoyages.com/fitness-spa))





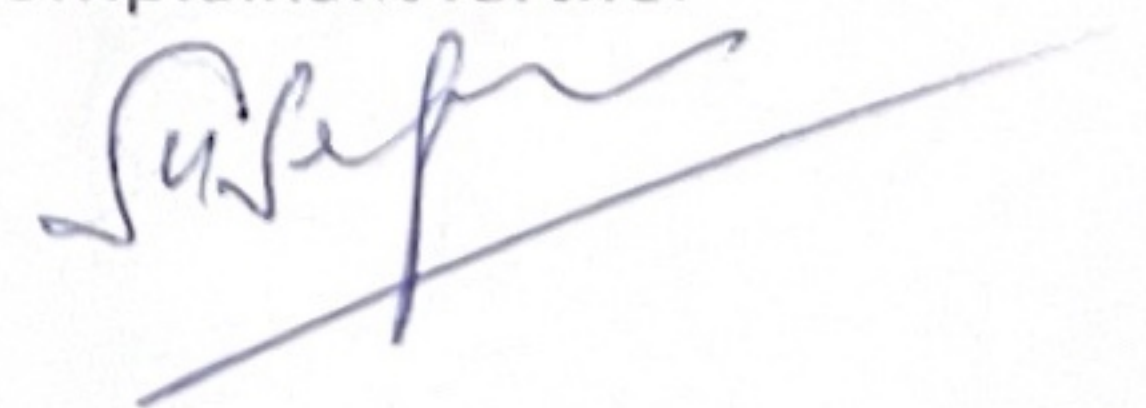
but the .in domain includes numerous spelling mistakes on this page; (iii) Furthermore, the "BOOK" button on the top right hand corner of the official site has been replaced with an "APPLY" button which links to a form requesting personal information such as name, telephone number, e-mail address, age and provides the ability to upload a CV. (iv) Under the "CAREERS & JOB" heading, there is a subheading for "REGISTRATION FEES" which links to a QR code which is affiliated with a WhatsApp account (<https://virginvoyages.in/www.virginvoyages.com/payment/index.html>).

#### **Respondent's Contentions**

The Respondent has failed to submit any response to the arbitration notice issued by this panel.

#### **The Respondent's lack of rights or legitimate interest in the domain name Complainant's Contentions**

The Complainant contended that since the disputed domain name comprises the reputed trademark VIRGIN VOYAGES in which the Complainant has sole and exclusive interests, it is evident that the Respondent cannot have any rights or legitimate interest in the domain name. The Complainant further contended that the Respondent's choice of the Complainant's reputed trademark VIRGIN VOYAGES as part of its domain name is totally unnecessary and the Complainant submits that the sole purpose of carrying on business through the use of the disputed domain name incorporating the Complainant's reputed trademark is to cause confusion as to the source, sponsorship, affiliation, or endorsement of the activity being carried on through the website. The Complainant further contended that upon information and belief, VIRGIN VOYAGES is not the Respondent's personal name, neither is the Respondent commonly known by the domain name and Respondent is not known to the public under the name VIRGIN VOYAGES. The Complainant further contended that the Respondent's website is not bona fide since the Respondent is trading on the fame and recognition of the Complainant's reputed trademark in order to cause initial interest confusion and bait internet users to accessing its website and may be to force the Complainant to buy the domain name from the Respondent in order to avoid said confusion as is typically the strategy of such cyber squatters. The Complainant further contended that that the Respondent has not engaged in any activity to show it has legitimate rights or interest in the impugned domain name. The Complainant further contended that given that the disputed domain name was only created on August 11, 2023, it is inconceivable that the Respondent was unaware of the existence of the Complainant at the time of registration. The Complainant further





contended that the Respondent has no rights or legitimate interest in the domain name and it is apparent that the sole purpose of registering the domain name is to misappropriate the reputation associated with the Complainant's trademarks and extort money from the Complainant.

#### **Respondent's Contentions**

The Respondent has failed to submit any response to the arbitration notice issued by this panel.

#### **The domain name has been registered and used in bad faith.**

The Complainant contended that the disputed domain name <VIRGINVOYAGES.IN> incorporates the Complainant's reputed mark VIRGIN VOYAGES without the Complainant's consent it is evident that the Respondent can have no rights or legitimate interest in the domain name and the sole purpose of the adoption of the Complainant's trademark in its entirety by the Respondent is to misappropriate the Complainant's reputed trademark VIRGIN VOYAGES. The Complainant further contended that because the Complainant's mark VIRGIN VOYAGES is reputed the Respondent is presumed to have had knowledge of the Complainant's mark at the time it registered the confusingly similar domain name and this knowledge indicates Respondent's bad faith use and registration. The Complainant further contended that the Respondent is bound to have had prior knowledge of the fame and reputation of the Complainant's reputed trademark VIRGIN VOYAGES. The Complainant further contended that there is a great likelihood that an actual or potential visitor to the Respondent's present web page or any future web page that the subject domain name resolves to, will be induced to believe that the Complainant has licensed the trademark VIRGIN VOYAGES to the Respondent or has authorized the Respondent to register the disputed domain name , to believe that the Respondent has some connection with the Complainant in terms of a direct nexus or affiliation with the Complainant or has been authorized by the Complainant. The Complainant further submitted that that the disputed domain name has been registered and is being used in bad faith and if this kind of situation is not remedied at the earliest, it may lead to various hardships to the Complainant such as loss of profits, dilution of mark, future litigation, loss of reputation, etc.

#### **Respondent's Contentions**

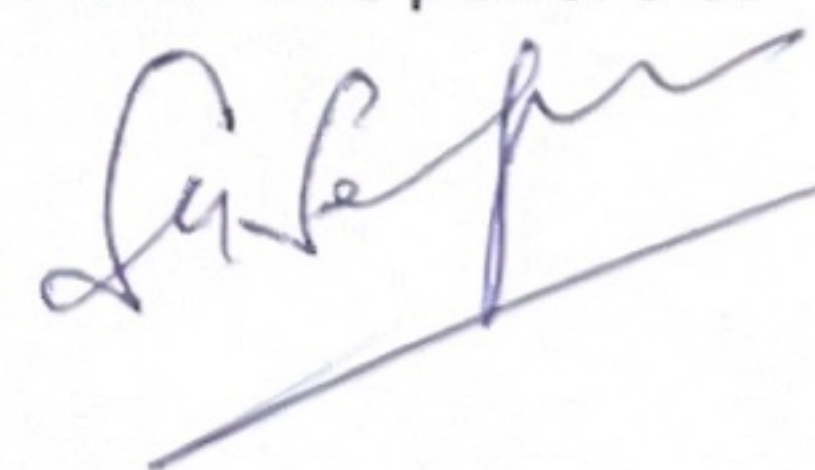
The Respondent has failed to submit any response to the arbitration notice issued by this panel.

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## DISCUSSION AND FINDINGS

The Complainant Virgin Enterprises Limited is part of the Virgin Group and is in business of financial services, health and wellness, music and entertainment, people and planet, telecommunications and media, travel and leisure, and space. The Complainant is operating in many countries of the world. The Complainant is owner of number of trademark containing VIRGIN and these trademarks are registered in many classes of goods and services in many jurisdictions. The Complainant is using the mark VIRGIN since early 1970s. The Complainant operates under brand VIRGIN and their businesses incorporates the distinctive VIRGIN name such as Virgin Voyages, Virgin Atlantic, Virgin Active, Virgin Money, Virgin Media. The Complainant is also owner of many domain names consisting of or incorporating the VIRGIN mark. The Complainant is also owner of top level domains <virgin.com> & <virginvoyages.com> which were registered years before the registration of disputed domain <virginvoyages.in> in 2022 by the respondent. The Complainant hosts website on this domain to promote the activities of the VIRGIN Group. Each of the Virgin businesses has its own website and domain <virginvoyages.com> has website dedicated to brand Virgin Voyages of the Complainant. The Complainant has significant presence on various social media platforms. The Complainant is operating since 2014 providing cruise holidays as licensee. The Complainant gets significant revenue from licensees. The mark VIRGIN of the Complainant is well known and needs to be protected from unauthorized use by third parties. The Respondent Alex William has registered the domain name <VIRGINVOYAGES.IN> on August 11, 2023 which incorporates in its entirety the Complainant's mark virgin Voyages. The Respondent is not authorized or licensed by the Complainant to use the well known mark of the Complainant. The Respondent is also hosting website on disputed domain which has business similar to those of the Complainant. The disputed is likely to create confusion in minds of ordinary internet user that the disputed domain is affiliated to the Complainant. The intentions of Respondent are to profit from the popularity of Complainant's mark/domain. The panel also





takes notice of the fact that Respondent has not given his complete address while registering the disputed domain. The Respondent has failed to submit any response to the arbitration notice issued by this panel so as to rebut the contentions of the Complainant.

#### **Respondent's Default**

The INDRP Rules of Procedure require that Arbitrator must ensure that each party is given fair opportunity to present its case. Rule 8(b) reads as follows;

"In all cases, the arbitrator shall at all times treat the parties with equality and provide each one of them with a fair opportunity to present their case."

Rule 12 empowers arbitrator to proceed with an ex parte decision in case any party does not comply within the time limits or fails to reply against the complaint. Rule 12 reads as follows:

"In the event any party breaches the provisions of INDRP rules and /or the directions of the Arbitrator, the matter can be decided ex parte by the Arbitrator and such arbitral award shall be binding in accordance with the law."

The respondent was given notice of administrative proceedings in accordance with Rules. The panel finds that the Respondent has been given fair opportunity to present his case. The Rules paragraph 12(a) provides that the Arbitrator shall decide the complaint on the basis of the Complainant's contention and documents submitted in accordance with Rules and any other law which Arbitrator deems fit to be applicable. In the circumstances, the Arbitrator's decision is based upon the Complainant's assertions, evidence and inferences as the respondent has not replied.

**The domain name <VIRGINVOYAGES.IN> is identical to trading style and trade name in which the Complainant has rights.**

The Complainant has been able to prove that it has trademark rights and other rights in marks 'VIRGIN' and 'VIRGINVOYAGES' by submitting substantial



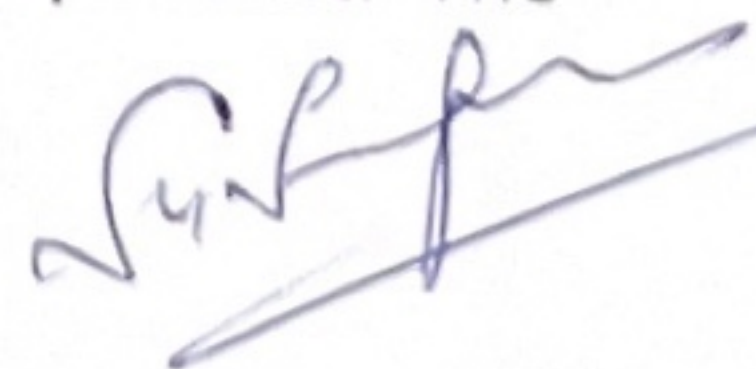


documents. The marks are widely used by the Complainant group in relation to their business. The disputed domain name <VIRGINVOYAGES.IN> contains well known mark 'VIRGINVOYAGES' mark of Complainant's mark completely. Addition of top level domain (CCTLD) extension '.in' is insignificant and does little to make it different. There can't be coincidence that the Respondent has chosen domain name similar to the marks of the Complainant. The top level domain <VIRGIN.COM> & <VIRGINVOYAGES.COM> were registered by the Complainant years before registration of disputed domain <VIRGINVOYAGES.IN> by the Respondent in 2022. The disputed domain name <VIRGINVOYAGES.IN> is identical to the mark/domain of the Complainant. The intent of the Respondent appears to commercially gain from the popularity of Complainant's mark and thereby also causing irreparable loss to the reputation of the Complainant. The Respondent has failed to submit any response to the arbitration notice issued by this panel to rebut the contentions of the Complainant.

Based on the forgoing analysis, I am of the opinion that the disputed domain name is nearly identical and confusingly similar to the complainant's mark.

**The Respondent has no rights or legitimate interests in respect of the Domain Name.**

The Complainant has been able to prove by submitting evidences that it has legitimate interest in trademark 'VIRGIN' and 'VIRGINVOYAGES'. The Complainants have never granted, licensed or authorized the Respondent to use Complainant's mark. The Respondent is not known by the mark and can't have legitimate interest in the disputed domain. The Respondent should have come forward with evidence to show his legitimate interest by rebutting the contentions of the Complainant. The Respondent failed to submit his response to justify legitimate non commercial use of disputed domain name. This panel is of the view that mere registration of domain name can't establish rights in disputed domain. According to the Policy that "once the Complainant makes a prima facie showing that the registrant does not have rights or legitimate interests in the domain name, the burden shifts to the registrant to rebut it by providing evidence of its rights or legitimate interests in the domain name". The burden of proof to establish any legitimate interest falls on the Respondent. The





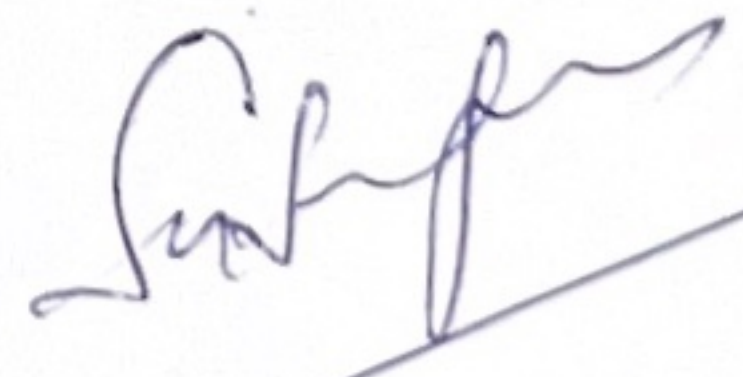
Respondent could have invoked any of the circumstances set out in paragraph 6 of the Policy, in order to demonstrate rights or legitimate interests in the Disputed Domain Name but the Respondent has not filed any response to justify the legitimate interests in the disputed domain name to rebut the contentions of the Complainant.

Therefore, in light of complaint and accompanying documents, I am therefore of the opinion that the Respondent has no rights or legitimate interest in the disputed domain name.

**The Domain Name was registered or is being used in bad faith**

This can't be a coincidence that the Respondent registered disputed domain name fully incorporating well known mark of the Complainant. The Complainant has been the using the marks for several decades before registration of the disputed domain name in 2022 by the Respondent. The panel finds that the Respondent has used the well-known mark of the Complainant in disputed domain name giving impression that this domain is affiliated to the Complainant. The sole purpose of the Respondent is to create confusion to an ordinary internet user. The Respondent is hosting website on the disputed domain having business activities similar to those of the Complainant and his motive appears to profit from the popularity of the Complainant's mark. The intent of the Respondent to profit from the reputation of the Complainant's mark is definitely a bad faith registration use. The Respondent must have done dilly diligence to ensure that domain name registered does not infringe upon someone other's rights. The panel also takes notice of the fact that the Respondent has failed to submit any response to rebut the contentions of the Complainant.

In view of the above, In view of the above, I am of the opinion that registration of disputed domain name is bad faith.




### Decision

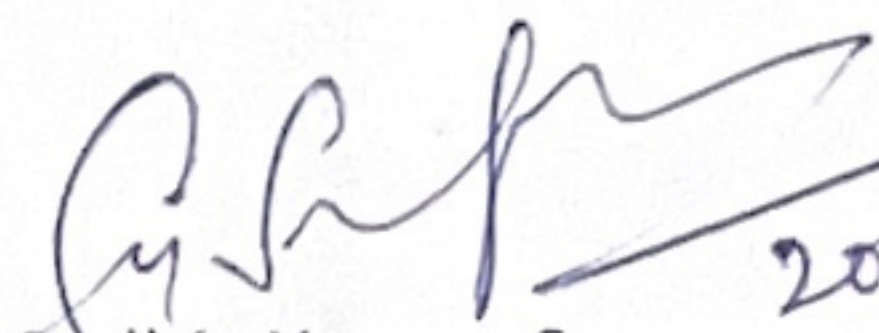
Based on the of contentions of the complainant , the attached documents , cited decisions and in view of the above read with all the facts of the present case, the Complainant's contentions are tenable. The test of prudence demands fairness of actions by the Respondent. The Respondent has failed to rebut the Complainant's contentions. In view of the forgoing discussion, I am of the opinion that the disputed domain name is identical to the Complainant's marks/domain. The Respondent does not have rights or legitimate interest in the disputed domain name and disputed domain name was registered in bad faith.

In accordance with the Policy and Rules I direct that the Disputed Domain name <VIRGINVOYAGES.IN> be transferred to the Complainant, with a request to NIXI to monitor the transfer.

The award is being passed within statutory deadline of 60 days from the date of commencement of arbitration proceedings.

No order to costs.

December20,2023

  
Sudhir Kumar Sengar 20/12/23

SOLE ARBITRATOR