

DISPUTE RESOLUTION SERVICE

D00012737

**Decision of Independent Expert
(Summary Decision)**

Virgin Enterprises Limited

and

**Virgin Logistics Ltd (now known as Metro Enabling Services
Ltd)**

1. The Parties:

Lead Complainant: Virgin Enterprises Limited
The School House
50 Brook Green
London
W6 7RR
United Kingdom

Respondent: Virgin Logistics Ltd (now known as Metro Enabling Services
Ltd)
17 Spruce Close
Larkfield
Aylesford
Kent
ME20 6NP
United Kingdom

2. The Domain Name(s):

virginlogistics.co.uk

3. Notification of Complaint

I hereby certify that I am satisfied that Nominet has sent the complaint to the respondent in accordance with paragraphs 2 and 4 of the Procedure.

Yes No

4. Rights

The complainant has, to my reasonable satisfaction, shown Rights in respect of a name or mark, which is identical or similar to the Domain Name.

Yes No

5. Abusive Registration

The complainant has, to my reasonable satisfaction, shown that the Domain Name **virginlogistics.co.uk** is an Abusive Registration

Yes No

6. Other Factors

I am satisfied that no other factors apply which would make a summary decision unconscionable in all the circumstances Yes No

7. Comments (optional)

The Expert has determined that this Dispute should be resolved in the Complainant's favour. However, the Expert has some concerns regarding the Complainant's conduct in this case, with regard to an apparent lack of candour and withholding of potentially pertinent evidence.

The Policy requires a Complainant to show both that it has relevant Rights AND that the disputed domain name is an Abusive Registration. In this case, the Complainant provided ample evidence – including 49 page Witness Statement with additional Exhibits – of applicable Rights. Various assertions were then made on a number of Grounds as to why the domain name should be considered an Abusive Registration (including under paragraph 3(a)(i)(A) of the Policy), but with minimal supporting evidence.

Reference was made to correspondence with the Respondent, which was reportedly not responded to, at least insofar as it related to the domain name but, rather unusually in the Expert's experience, the dates and details of this correspondence were not put in evidence.

As the details provided by Nominet with the Complaint showed that the Respondent had also actually changed its company name from Virgin Logistics Limited to Metro Enabling Services Limited before the Complaint

was filed (a fact not mentioned in the Complaint) the Expert considered that the details of the correspondence between the parties might provide a fuller picture of the Respondent's conduct and motivation relevant to a decision and sought disclosure of copies of this correspondence from the Complainant pursuant to Paragraph 13a of the Procedure.

The Complainant disclosed two letters (of 12 December 2012, and 5 March 2013), the latter of which referred to an earlier "offer to sell the Domain Name" evidently made by the Respondent. The context of this reported "offer" (presumably made in correspondence or other communication from the Respondent) was not disclosed, and nor were earlier obviously pertinent letters from the Complainant of 8 October 2012 and 1 November 2012, which were also explicitly referenced in the two letters which were disclosed.

The Expert considers that lack of full disclosure in response to an Expert's specific request, inevitably raises doubts and risks potentially adverse inferences being drawn. In the Expert's view it is therefore desirable that full disclosure should not be withheld without an adequately reasoned explanation or justification.

In the present case, insofar as the Expert is able to conclude from the limited disclosures, it seems that upon first being contacted by the Complainant the Respondent most likely realised very quickly that it could not trade legitimately under the "Virgin Logistics" name and so promptly changed its corporate name, and simply shelved any plans for direct use of the Domain Name in connection with its business. It made some sort of offer to sell it to the Complainant, but wasn't minded, for whatever reason, to cooperate with the Complainant's request to transfer it. In these circumstances, in the absence of any alternative explanations from the Respondent, the Expert has found for the Complainant, notwithstanding the reservations expressed about disclosure above.

8. Decision

Transfer	<input checked="" type="checkbox"/>	No action	<input type="checkbox"/>
Cancellation	<input type="checkbox"/>	Suspension	<input type="checkbox"/>
Other (please state)	<input type="checkbox"/>		

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Signed:
Keith GYMER

Dated: 12 June, 2013